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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 117.

THE OUACHITA AND MISSISSIPPI RIVER PACKET COMPANY, WILLIAM T. SCOVELL, WILLIAM M. WOOD, ISABEL O'PRY ET AL., APPELLANTS,

vs.

MRS. CATHERINE M. AIKEN, ADMINISTRATRIX OF JOSEPH A. AIKEN, DECEASED, JOHN H. MENGE, JOHN J. BROWN, AND JOHN W. TOBIN, COPARTNERS, DOING BUSINESS UNDER THE FIRM-NAME OF JOSEPH A. AIKEN & CO., AND THE CITY OF NEW ORLEANS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 9, 1883.

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a *Transcript of Appeal, Returnable in the Supreme Court of the United States on the Second Monday of October, A. D.* 1883.

UNITED STATES OF AMERICA:

United States' Circuit Court, Fifth Circuit, Eastern District of Louisiana.

THE OUACHITA & MISSISSIPPI RIVER PACKET COMPANY *et al.* *vs.* Mrs. C. M. AIKEN, Adm'x, *et al.* } No. 9878.

Messrs. Kennard, Howe & Prentiss and Charles S. Rice for the Ouachita & Miss. River Packet Co., complainants, appellants; Bayne & Denegre and W. S. Benedict, Esq'res, for Mrs. C. M. Aiken, adm'x, *et als.*, respondents, appellees.

1 *Bill of Complaint. Filed March* 25, 1882.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Judicial Circuit & Eastern District of Louisiana.

OUACHITA & MISS. RIVER PACKET CO. *vs.* Mrs. C. M. AIKEN *et als.* } No. 9878.

To the honorable the judges of the United States circuit court for the fifth circuit and eastern district of Louisiana:

The Ouachita and Mississippi River Packet Company, a corporation duly organized under the laws of the State of Kentucky, having its legal domicile in the city of Louisville, in said State, and herein appearing by Fred. A. Blanks, its president; also William T. Scovell, William M. Wood, and Isabel O'Pry, wife of and herein joined and authorized by her husband, James T. O'Pry; also said James T. O'Pry, and the succession of Mrs. M. E. Bassett, deceased, represented herein by Wm. S. Bassett, and Mrs. Martha Van Bibber, executors of the last will and testament of said Mrs. Bassett, deceased, [and] Marion N. Wood; also Eugene Charlet, P. A. Charlet, Joseph F. Aucoin, residents of Louisiana; Matthew L. Scovell, Mrs. M. J. Brinker, wife of and herein joined and authorized by her husband, H. J. Brinker, and John Thorn, all of the city of New Orleans aforesaid; also Alexander M. Halliday, Christian G. Young, and Mrs. Hall, widow of — Hall (whose full name is unknown), all of Cincinnati, in the State of Ohio; also Edwin Hornbrook and T. C. Sweeney, of the city of Wheeling, in the State of West Virginia; and of Edgar M. Valfette, of Algiers, in the State of Louisiana, on behalf of themselves and all other persons in like interest who shall come in and contribute to the expenses of this suit, bring this their bill against Mrs. Catherine M. Aiken, administratrix of Joseph A.

Aiken, deceased, John H. Menge, John J. Brown, and John W. Tobin, all of the city of New Orleans, doing business as copartners under the firm name of Joseph A. Aiken & Co., and against said city of New Orleans.

And thereupon your orators complain and say that they are the sole and only owners of the steamboats named as follows: The said Ouachita and Mississippi River Packet Company, of the steamboats called the "Fred. A. Blanks," the "H. Hanna Blanks," the "John H. Hanna," and the "Clara S.;" the said William T. Scovell, William M. Wood, and Mrs. Isabel O'Pry, of the steamboats called the "Isabel" and the "Alvin;" the said William M. Wood, James T. O'Pry, and the succession of Mrs. M. E. Bassett, of the steamboat called the "Martha;" the said Marion N. Wood, of the steamboat called the "Silver City;" the said Eugene Charlet, of the steamboat called the "Belle of the Coast;" the said Joseph F. Aucoin, and P. A. Charlet, of the steamboat called the "Assumption;" the said Matthew A. Scovell, of the steamboat called the "John D. Scully;" the said Mrs. M. F. Brinker, of the steamboat called the "Maria Louise;" the said John Thorn, of the steamboat called the "Danube;" the said Alexander M. Halliday, Christian G. Young, and Mrs. Widow Hall, of the steamboat called the "Paris C. Brown;" the said Edwin Hornbrook, of the steamboat called the "Jennie Campbell" and the several barges towed by her; the said T. C. Sweeney, of the steamboat called the "Earle," and the said Edgar M. Valette, of the steamboat called the "Maxie S," all of which steamboats are employed in carrying passengers for hire to and from the said port and city of New Orleans, upon the Mississippi river, and other ports and places on said river and on the rivers and waters tributary thereto, and are all enrolled and licensed for the coasting trade of United States, and to carry on said trade between the different States bordering on the Mississippi river and its tributaries.

And your orators further complain and say that the said steamboats owned by them and so employed in trade to and from the said port of New Orleans, upon said waters have, and so have your orators for many years, been so employed, and that they intend and expect to be so employed for many years yet to come; that the trades in which the said steamboats have been and are employed do and will continue to require the services of steamboats of capacities equal to or greater than those of the steamboats hereinbefore mentioned.

And your orators further complain and say that on the 17th of January, 1875, the council of the city of New Orleans adopted an ordinance, "fixing and regulating charges for wharfage, levee, and other facilities afforded by the city of New Orleans to commerce," by which ordinance, among other matters and things, it was ordained that the wharfage dues on all steamboats shall be fixed as follows: Not over five days, ten cents per ton, and each day thereafter, five dollars per day; boats arriving and departing more than once a week, five cents per ton each trip; boats lying up for repairs during the summer months to occupy such wharves as may not be required for shipping, for thirty days or under, one dollar per day."

Said charges to be exigible from all steamboats landing or mooring at the wharves furnished by the city of New Orleans, which said ordinance is for reference and for greater certainty made a part of their bill and is filed with it as an exhibit.

And your orators further complain and say that on the 17th day of May, 1881, the council of the city of New Orleans likewise adopted an ordinance "providing for the building and repairing of the wharves and levees of the city of New Orleans, and for farming the revenues thereof." That said ordinance, which is also made a part of this bill and filed with it as an exhibit, provides, among other things, that the administrator of commerce shall, after the enactment of said ordinance and after giving ten days' notice in the official journal that he will receive at his office sealed proposals for their sale, adjudicate as provided in section 26 of said ordinance, and in accordance with other stipulations in said ordinance contained, the revenues of the wharves and levees of the city of New Orleans, collectible at the rates as may be fixed upon all ships, vessels, steamboats, barges, flat-boats, and other water crafts of any and every description whatsoever, for the term of five years, commencing on the 29th day of May, 1881, and ending on the 28th day of May, 1886.

That the wharves and levees included in said ordinance comprise all the wharves and levees in the first, second, third, and fourth districts of said city—that is, from Louisiana avenue, the upper boundary of said fourth district, to the lower line of said city, including all the river front of the city of New Orleans, save and excepting certain parts of said wharves and levees the use of which has been granted by the city of New Orleans to private corporations or parties.

And your orators further complain and say that by the 15th section of said ordinance the said city council has appropriated and set apart the entire wharves and levees aforesaid, from Harmony street above to Congress street in the lower part of the city, thus comprising the entire front of the business portion of said city, exclusively to various classes of shipping; that the sole portion of said space appropriated and set apart for the landing of steamboats is the space or front between Girod and St. Louis streets, the entire front of which space is covered with wharves, at which all steamboats landing at the port of New Orleans are compelled by said ordinance to moor, and for which privilege or pretended privilege the illegal charges, tax, and tonnage duties to be hereinafter mentioned are exacted.

2 And said ordinance also provides that the person or persons to whom shall be adjudicated the said revenues, collectible as may be provided, shall accept the wharves, landings, and levees in the condition in which the same may be on the 29th day of May, 1881, and to repair and always keep the same in good order and condition during the whole term of their contract. And said ordinance, as will be seen by inspection thereof, and especially of sections 5, 6, 7, 8, 9, 10, 12, and 13 thereof, describes the manner and style of repairs and new work to be performed under said contract.

And section 11 thereof provides, among other things, for the building of additional new wharves by the lessees of said revenues, such as may be necessary, at an expenditure not to exceed twenty-five thousand dollars in any one year.

By section 12 of said ordinance the said lessees are bound to accept the levees in front of said city in the condition they were in on said 29th day of May, 1881; to fill the same up during the first year of the contract, so as to place the outer edge of the same at the level now established to the level of the steamboat landing at Common street; to grade the same from their outer edge to the paving of the street in the rear on a regular declivity, and other work pertaining to said levee, as in said section appears.

By section 13 of said ordinance the said lessee is bound to keep in good order and condition, during the whole term of said contract, all revetments on the outside of said levee in front of said district; to build all new revetments; to replace those that may perish or be destroyed from any cause; to build during the first two years of said contract a piled bulkhead in the third district, from Marigny to Delery streets, according to certain plans and specifications, the same to be of the best material and in the most workmanlike manner, and always to be kept in the best order and condition during the whole term of said contract, and to be by him rebuilt, if destroyed, whether by decay, caving of the bank or bed of the river, storms or otherwise.

And by section 14 of said ordinance said lessee is bound to furnish all the necessary apparatus and light with the electric light all the levees, landings, and wharves from Toledano street to Congress street, being the entire business river frontage of the city of New Orleans, the lamps or lights to be placed at no greater distance than (250) two hundred and fifty feet apart, and the height at which the same are to be erected to be determined on by said city council, said lamps or lights to be kept lighted each and every night from sunset to sunrise, and the class, quality, make, and power of said light to be designated by said city council.

And by section 26 of said ordinance the said lease or farming of said so-called wharf charges or dues thereof are to be adjudicated to the person or persons agreeing to receive the lowest rate or rates of wharfage, and to pay annually to the city of New Orleans, in equal monthly installments, the sum of forty thousand dollars, thirty thousand dollars of which, it is provided, shall be devoted to the maintenance of a harbor police for the protection of commerce, etc., along the river front of the city, the remaining ten thousand dollars to be set apart and devoted exclusively to the payment of the salaries of wharfingers, contravention clerks, signal officers, and other employees on the levees in connection with the department of commerce of said city, and in connection with the foregoing to keep the wharves lighted with electric lights, as in said ordinance elsewhere provided.

And your orators further complain and say that the advertisement provided for in the first section of said ordinance was first published in the official journal of the city of New Orleans on the

18th day of May, 1881; that at a special meeting of the city council held at twelve o'clock noon on the 27th day of May, 1881, at which time but nine days' publication of said notice had been made in said official journal, and but nine days of the delay provided in said ordinance had elapsed, there was submitted to said city council, and by it at once adopted, a proposition in writing made by Joseph A. Aiken, then of the city of New Orleans, to accept, lease, and contract, as stipulated in said ordinance of May 17th, 1881, to comply with all the terms and stipulations of said ordinances, and to charge the rates of wharfage as stipulated in the ordinance hereinbefore mentioned, fixing and regulating the charges of wharfage, of January 19th, 1875, with the exceptions in said proposition mentioned relative to the charges to be demanded of steamships, and the further proposal that he, said Aiken, would for the third year of said lease reduce the rates on all ocean towage, and on steamboats and other licensed vessels employed regularly in transporting merchandize on the Mississippi river, ten per cent.; and for the fourth and fifth years he would make a deduction of twenty per cent. on the rates named in said ordinance of January 19th, 1875, besides other inconsiderable exceptions, as in said proposition appear, and which forms a part of and is embodied in the contract of the city of New Orleans and said Aiken, and filed herewith as an exhibit and made a part of this bill; that in pursuance of the acceptance and adoption of said proposal a contract was entered into in writing between the city of New Orleans and said Joseph A. Aiken before Samuel Flower, a notary public, on the 30th day of May, 1881, embodying all the said ordinance at length and the said proposal. A duly certified copy of said contract is, as an exhibit, hereto annexed as part of this bill.

That by said contract the city of New Orleans purports to have granted, bargained, and sold unto the said Joseph A. Aiken the revenues of the wharves and levees of the city of New Orleans, collectible as hereinbefore stated, upon all ships, steamships, steamboats, barges, flat-boats, and other water crafts of any and every description whatever, for the term of five years, commencing on the 29th day of May, 1881, and ending on the 28th day of May, 1886.

And your orators further show that, subsequent to the date of said contract between the city of New Orleans and Joseph A. Aiken, the said Joseph A. Aiken deceased, and that the city of New Orleans did, by ordinance No. 7473, A. S., adopted December 6th, 1881, recognize as the representatives and successors of Joseph A. Aiken in and to the said contract the defendants to this bill, who have been named in the caption thereof.

And your orators further complain and say that they are advised, and so believe and charge, that said contract is illegal, null, and void for the reasons, among others, that it was not preceded by ten days' advertisement of notice in the official journal, as required by the first section of said ordinance of May 17th, 1881; that within the ten days' delay granted and given for said notice a *bona fide* proposal in writing, the party making the same therein agreeing to charge or receive lower rates of wharfage than those mentioned in

the said proposition of Joseph A. Aiken, was, your orators are informed and verily believe, presented to the administrator of commerce of the city of New Orleans, and was not by him or by the city council considered or accepted.

And your orators further complaim and say that the said ordinances of January 19th, 1875, of May 17th, 1881, and the said contract between the city of New Orleans and the said Joseph A. Aiken on the 30th day of May, 1881,. are absolutely null and void, being in contravention of the laws and Constitution of the United States; that said ordinances undertake to impose and with said contract to authorize the said Joseph A. Aiken to demand and collect, under the name and guise of wharfage dues or charges, a tax or dues for revenue, to be devoted in large part to the support and pay
3 of the salaries of the public police force of the city of New Orleans; that in order to carry out the provisions of said ordinance with relation to such police force the council of the city of New Orleans adopted an ordinance on the 27th of July, 1881, among the provisions of which it was prescribed, by section 20 thereof, as follows: "That it is made the duty of said force, or of any officer or member thereof, at all hours of the day and night, and they are empowered to preserve the public peace, prevent crimes, detect and arrest offenders, suppress riots, protect the rights of persons and property, preserve order at elections, report nuisances upon the public streets, repress and restrain disorderly and gambling houses, enforce every law relating to the suppression and punishment of crimes, or any ordinance or resolutions of the city council, and enforce all wharf ordinances, etc., when called upon by the administrator or any duly commissioned officer of the department of commerce;" all of which more fully appears from a copy of the same cut from the official journal and filed with and made a part of this bill.

And your orators further complain and say that on the — day of August, 1881, the mayor of the city of New Orleans vetoed said ordinance, assigning as reasons for his said veto, in substance, that the sum of money, to wit, ($30,000) thirty thousand dollars, to be derived from the aforesaid wharf ordinance No. 7079 ought to be devoted to the payment of the entire police force of the city, and not specially to the payment of the force mentioned in said ordinance of July 27th, 1881, as more fully appears from a copy of his veto message cut from the official journal and hereto annexed as part of this bill.

And your orators further complain and say that up to the present time the council of the city of New Orleans has in nowise provided for a harbor police, and that there is no harbor police doing duty upon the wharves and levees of the city of New Orleans, except as part and parcel of the general public police of said city, in no manner distinct therefrom in respect to organization and duties and having no special or other duties than pertain to the general public police force of said city.

And under said name and guise, as wharfage dues or charges, the said ordinance No. 7079 undertook to enforce and authorize the collection of an illegal and unconstitutional tax of ten thousand dol-

lars ($10,000) for the pay of the salaries of officers, clerks, and other employees of the city of New Orleans belonging to the office of the department of commerce of said city; and said ordinance further provides for the lighting in an expensive and useless manner, so far useless in every respect as it relates to the commerce of the port of New Orleans, of the wharves and levees of said city, and being of no benefit whatsoever to your orators, the cost of which would be at least the sum of ($25,000) twenty-five thousand dollars during each and every year of said contract, if the terms thereof are complied with, and the said ordinance No. 7079 undertakes to impose, under the name and guise of wharfage dues or charges, a tax or revenue which, during the term of said contract, will amount to many hundreds of thousands of dollars, for the repair, rebuilding, and erection of public levees, bulkheads, and revetments of levees, the principal and almost entire object and use of which is to protect the general public and private property of the city of New Orleans and its inhabitants, which people, in the protection of their property by said works, has nearly or quite the exclusive benefit of them, while the shipping and commerce, and especially the steamboats mooring in said port, derive and can derive little or no benefit therefrom whatsoever.

And your orators further complain and say that by the said ordinance of May 17, 1881, the said steamboats owned by them, and all steamboats arriving at the port of New Orleans, are compelled to moor and do moor at the public wharves between Girod and St. Louis streets, there being no other place on the river front of the city for the landing or mooring of steamboats within the business limits thereof; that the imposition and collection of said pretended dues and charges for wharfage therefore amount to a charge or tax for entering said port; that the right of the city of New Orleans to impose and collect wharfage dues is limited to such reasonable compensation for the use of the wharves and levees erected by said city as will be a fair compensation for said use and the keeping of such wharves in good condition and repair; that the imposition of said dues or charges, whether the same be demanded and collected by the city of New Orleans or by contractors or lessees to whom the said dues or charges may be formed, beyond the said necessary requirements, and especially the imposition and collection of such dues or charges to be devoted to the maintenance of a public police and other public purposes hereinbefore mentioned, disconnected and distinct from benefits and privileges under the name and guise for payment for which said charges or tax are imposed, is in violation of the Constitution of the United States as follows: Of article 1, section 10, forbidding any State, without the consent of Congress, from laying any duty of tonnage; of article 1, section 8, granting to Congress the power and authority to regulate commerce with foreign nations and among the several States, and with the Indian tribes; of article 1, section 10, forbidding any State, without the consent of Congress, to lay any impost or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; of article 1, section 9, "no tax or duty shall be laid on articles ex-

ported from any State," and of the act of Congress of April 8th, 1812, admitting the State of Louisiana into the Union, in which act it is declared: "And taken as a condition upon which said State is incorporated in the Union; that the river Mississippi and the navigable rivers and waters leading into the same and into the Gulf of Mexico shall be common ways and forever free, as well to the inhabitants of other States and Territories of the United States, without any tax, duty, impost, or toll therefor imposed by the said State."

And your orators further complain and say that the rates of wharfage charges or dues, so called, as fixed by said ordinances and said contract, adopted with the very insignificant modifications thereof, as mentioned in said bid or proposal of said Aiken, and made part of said contract, are unreasonable, excessive, and unjust, and are nearly or quite double the rates necessary for the maintenance and repairs of the wharves necessary for the mooring of ships, steamboats, vessels, and water crafts of every description, and the use and convenience of the same at the port of New Orleans; and he specially complains and says that the so-called charges are in excess, to the full extent mentioned, of the fair, just, and necessary compensation lawfully demandable from steamboats landing at the wharves designated and set apart for them in said ordinance of May 17th, 1881, and the said ordinances and contract are, therefore, obnoxious to the said provisions of the Constitution of the United States and the said act of Congress hereinbefore mentioned.

And your orators further complain and say that since the adoption of said ordinance No. 7079, and the making of said contract thereunder with said Joseph A. Aiken, ordinance No. 7335, was, on the 13th of September, 1881, adopted by the city of New Orleans as follows:

4

MAYORALTY OF NEW ORLEANS,
CITY HALL, *September* 13, 1881.

(No. 7335, administration series)

An ordinance amending ordinance, No. 7079, A. S., and the wharf lease and contract.

Be it ordained, That ordinance No. 7079, A. S., be amended so as to strike out all that portion of section (13) thirteen which follows the words "the whole in the best workmanlike manner," and commences with the words "to build during the first two years," and in lieu of the obligations therein entailed upon the lessee of the wharves the said lessee be required to expend the sum of money which would be required to build the piled bulkhead in the third district, between Marigny and Delery streets, which said sum has been estimated at and is hereby fixed at ($59,500) fifty-nine thousand five hundred dollars, in protecting the bank of the river between Hospital street, in the second district, and Congress street, in the third district, or at such other places as may be directed by the administrators of improvements and commerce and the city surveyor, so that permanent wharves can be maintained within the

said space, and the ultimate connection of all the wharves in the said district, so as to make one continuous wharf, as contemplated by the contract, be rendered feasible, and the permanency of such wharf secured, and in giving such additional strength and security, and making such improvements to the wharves to be built as the administrator of improvements and administrator of commerce and the city surveyor may decide upon.

SEC. 2. That all of the provisions above and the changes herein provided be subject to the approval and acceptance of the wharf lessee and his sureties, and that upon his acceptance of the provisions of this ordinance and his approval thereof, together with the consent of his sureties, this ordinance and the changes herein provided shall become part of the contract of the city of New Orleans with the said lessee, and the mayor is hereby authorized to have drawn up a notarial act, which shall embody the provisions herein, and, together with the said lessee, sign the same.

Adopted by the council of the city of New Orleans September 13, 1881.

Yeas—Delamore, Fagan, Fitzpatrick, Guillotte, Huger, Walshe.
Absent—Mealey.

JOS. A. SHAKSPEARE, *Mayor.*

A true copy:

W. JOHN McCALL,
Assistant Secretary.

And that the provisions of said ordinance were approved and accepted by the said lessee.

And your orators further complain and say that by the release and pretended compensation therefor mentioned in the said ordinance the lessees of said so-called wharfage revenues and charges have been benefited in an amount exceeding, in the belief of your orators, the sum of one hundred thousand dollars during the term of said lease; that the character of the river bank between Marigny and Delery streets, mentioned in said ordinance, is that of a caving bank, requiring frequent rebuilding and replacement of bulkheads, or other proper protection for wharves, and at great expense; that the sum of $59,500, mentioned in said ordinance, is an entirely insufficient sum to be substituted as a release from the requirements and rewards mentioned as released by said ordinance; that said release enures solely to the benefit of defendants and in nowise to the benefit of your orators or to the commerce of the port; that the obligation so undertaken under section 13 of said ordinance 7079, and so released under said ordinance 7335, was an important factor in fixing the high rate of charges established in the said contract between the city of New Orleans and said Joseph A. Aiken; and that, besides the reasons herein mentioned, the maintenance of wharfage dues and charges, unchanged and unreduced, after said release, is unreasonable and unjust and in violation of the provisions mentioned of the Constitution of the United States; and your orators further complain and say that recently the city of New Orleans has

granted to the corporation known as the Northeastern Railway Company the use of a large space of the river front, say 3,000 feet thereof, of the space between Hospital and Congress streets, mentioned in said ordinance, and that thereby the lessees of the said wharves and levees are released and relieved, without any consideration whatever, from protecting the bank of the river for said space of 3,000 feet so granted, so that permanent wharves can be maintained within said space required by said ordinance 7335; all of which has been approved and assented to by the defendants.

And your orators further complain and say that, although nearly ten months have elapsed since the date of the contract between the city of New Orleans and the said Joseph A. Aiken, no electric lights, as required by the said ordinance of the city counsel, No. 7079, have been placed upon the wharves or levees of the city of New Orleans; that the city of New Orleans has failed and neglected to enforce said requirements; that by such failure and neglect and by the illegal collection from the commerce of the port of wharf dues and charges mentioned in said contract the said lessees under said contract have benefited in at least the sum of twenty-five thousand dollars, with no advantage or pretense of advantage to the ships, steamboats, etc., arriving at and mooring at the wharves of said city, or to anybody or thing else.

And your orators further complain and say that they are ready now and have at all times been willing to pay such just and reasonable wharf charges or dues as the city of New Orleans may lawfully impose or authorize to be collected as wharfage dues; that they recognize the right of the said city to impose and collect such just and reasonable compensation for the use of wharf improvements and privileges upon her river front, but they deny the right of said city by herself, or by contractors or lessees, under the said ordinance No. 7079, to impose, demand or collect the excessive, unjust, and illegal wharfage charges or dues therein authorized and especially mentioned in the contract of lease made with Joseph A. Aiken under said ordinance, and more especially in his proposition or bid made part of said lease, and the ordinance of January 19th, 1875, referred to in said bid and also made part of said lease.

And your orators further complain and say that it is their belief, founded upon their experience, and taking into full consideration the cost incurred in the maintenance of the wharves and river bank made use of in the commerce of the city of New Orleans, and especially for the use of steamboats, that an imposition of six cents per ton upon steamboats, in lieu and place of ten cents per ton, as allowed by the said lease, is sufficient and ample for the maintenance of all necessary wharves for the use and convenience of steamboats arriving at the port of New Orleans; and they further say that they have to the present time paid under protest the illegal charges and demands made in pursuance of the ordinances and contract aforesaid, and are in nowise indebted to the beneficiaries under said contract for wharfage dues and charges; and they do hereby declare that, in case of preliminary or final injunction allowed herein, they will pay voluntarily to said beneficiaries said charges or

dues at the rate of six cents per ton on the measurement of their steamboats, wherever ten cents per ton is fixed or required by said ordinances or contract.

That they have an interest in this matter, exclusive of interest and cost, exceeding five thousand dollars.

And your orators further complain and say that under and in pursuance of said pretended contract of lease and authority the said defendants have repeatedly demanded, and do upon each and every arrival of said steamboats belonging to your orators demand, wharfage dues at the rates set forth in said contract of lease, and that said defendants have refused to listen to the just remonstrances and protests of your orators, but have declared that they will continue to demand and will sue for and collect by law said wharfage charges or dues imposed by said ordinances and contract, and threaten to file suits against your orators for the recovery of the same in case of their refusal to pay such unjust and unlawful demands.

That your orators have no adequate remedy to protect their legal and constitutional rights in the premises by suits at law; that they will be compelled to defend each of said suits so brought against them separately, as the courts in which such suits will be brought have no authority to consolidate the said suits, and that in case of judgment against them they will be compelled to take separate appeals in each and every cause, even to the Supreme Court of the United States; that to protect their rights by such means can be but imperfectly and inadequately done, and at great and ruinous loss of time and money.

That, for the reasons and causes hereinbefore set forth and to protect them in their said legal and constitutional rights and against the said multiplicity of suits, they have no adequate remedy at law.

That, as appears herein, the matters involved arise under the Constitution and laws of the United States.

And your orators further complain and say that they have a common interest in the commerce of this port and a common interest herein to set aside and annul the aforesaid ordinances and the contract of the city of New Orleans with Joseph A. Aiken made thereunder, the same tax or unlawful dues in character being demanded and extorted from each of your orators for the same unlawful object, and the right, manner, and interest of resistance and defence to the same being common to them all.

Your orators further specially aver that under the Constitution of the United States and the laws made pursuant thereto no charges of the kind sought to be imposed upon your orators are legal, except such as shall be a just compensation to the city of New Orleans for the use of wharves erected at her own expense; that no tax whatever can legally be imposed upon commerce to defray the expenses of original construction.

In tender consideration wherefore, and that your orators are remediless by the strict rules of the common law, and relievable only in a court of equity, where matters of this natureare properly cognizable—

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed for, may upon their several and respective corporal oaths full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated and charged as full and particular as if the same were hereinafter repeated and they thereunto distinctly interrogated, and that not only to the best of their knowledge and belief, but also as to their several and respective information and belief, hearsay, and remembrances—

May it please your honors to grant to your orators not only the most gracious writ of injunction issued out of an under the seal of this honorable court, to be directed to the said Mrs. Catherine M. Aiken, administratrix of Joseph A. Aiken, deceased; John H. Menge, John J. Brown, and John W. Tobin, to restrain them and each of them from demanding, collecting, or from proceeding at law against your orators touching any of the matters in question, but also the most gracious writ of subpœna of the United States of America, to be directed to the said defendants and each of them and the city of New Orleans, through and by its mayor, the Honorable Joseph A. Shakspeare, commanding them and every of them, at a certain day and under certain penalty to be therein specified, personally to appear before this honorable court, and then and there answer all and singular the premises, and, especially, to answer and show cause, if any they can, why said ordinances of the city council of the city of New Orleans, numbered, respectively, 2948, adopted January 19th, 1875; 7079, adopted May 17th, 1881, and the said contract between the said city of New Orleans and Joseph A. Aiken, dated 30th May, 1881, should not be declared illegal, unconstitutional, and void, and further to stand to, perform, and abide such order and decree therein as your honors shall deem meet, and that said injunction may be made perpetual, and for costs and general relief.

(Signed) KENNARD, HOUSE & PRENTISS,
CHAS. S. RICE,
Solicitors for Complainants.

U. S. OF AMERICA, *ss:*

Marion N. Wood, one of the complainants, being by me duly sworn, did depose and say that he has heard read the above bill signed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and that as to those matters he believes — to be true.

New Orleans, March 24th, 1882.

(Signed) M. N. WOOD.

[SEAL.] (Signed) T. WHARTON COLLINS,
Notary Public.

6 *Ordinance No. 2948 Referred to and Made Part of the Foregoing Bill.*

MAYORALTY OF NEW ORLEANS, CITY HALL, *Jan.* 20, 1875.

No. 2948, administration series.

An ordinance fixing and regulating the charges for wharfage, levee, and other facilities afforded by the city of New Orleans to commerce.

SECTION 1. Be it ordained by the city council of New Orleans, That as a reasonable remuneration for the facilities furnished by the city to commerce, such as building and keeping in order the wharves, piers, and levees, and other port expenses, all, vessels availing themselves of such facilities shall be subjected to the charges hereinafter named, taking the tonnage of said vessels as the most equitable and only practicable form of making the charges uniform in relation to the size & capacity of the vessels and as the best means of determining the amount which should, respectively, be paid by each vessel.

7 First. The charges upon all ships and other decked vessels and steamships arriving from sea and landing or mooring at any wharf or pier in the city shall be fixed as follows: Upon all vessels of one thousand tons and under, twenty cents per ton; and, excess of tonnage over one thousand tons, fifteen cents per ton; on all steamships navigating the Gulf of Mexico or engaged in that trade, fifteen cents per ton.

SEC. 2. That the said payments on ships or sail vessels shall be exacted as on steamships and collected by the collectors of wharfage dues, and extra charge of one-third these rates shall be paid by all sail vessels or steamships which may remain in port over two months, the same to be recovered before departure; and if they remain over four months an additional charge of one-third these rates per term of two months from arrival to departure.

SECTION 3. That the wharfage dues on all steamboats engaged in river trade which shall land or moore at any of the wharves or

8 piers of the city of New Orleans shall be fixed as follows: Ten cents per ton if in port not over five days, and five dollars per day after said five days shall have expired: Provided, That boats arriving and departing more than once a week shall pay only five cents per ton each trip: Provided, That the superintendent of wharfingers be authorized to allow steamboats laying up for repairs during the summer months to occupy such wharves as may not be required for shipping at the following rates of wharfarge, to wit: For thirty days use of wharf or under, two dollars per day; all over thirty days, one dollar per day.

SEC. 4. The levee or wharfage rates on barges, steamboat hulls, used as barges, flat-boats, and other licensed vessels employed regularly in the transportation of merchandise on the Mississippi river, shall be the same as those now charged for steamboats employed in the same business, viz: Ten cents per ton if in port eight days,

and five dollars per day after said eight days shall have
9 expired: Provided, That barges arriving and departing more than once each week shall pay only five cents per ton each trip: Provided, also, That this resolution shall not apply to barges, flat-boats, and vessels that come laden or otherwise to this port for a single trip to be broken up or their use as carriers of merchandise to be discontinued at the end of the trip.

SEC. 5. The wharfarge or levee dues on flat-boats, barges, etc., fully or in part laden with produce, materials, or merchandise of any kind shall be as follows: Flat-boats not measuring more than eighty feet, eight dollars; eighty to one hundred feet, ten dollars; one hundred feet and over, thirteen dollars; on each barge measuring less than seventy feet and not over twenty tons, eight dollars; and on each steamboat hull used as a barge, twenty-five dollars, and an extra wharfage shall be impose- at the same rate for every eight days thereafter, recoverable at the commencement of the ninth day
10 SEC. 6. That the charges mentioned in the preceding sections shall be exigible only from such of said vessels as shall land or moor at the wharves and piers furnished by the city of New Orleans.

SEC. 7. That when said vessels shall land or moor in a part of the port where there are neither wharves nor piers, but merely the levee, with suitable conveniences for making fast, the charge shall be only one dollar per day for steamboats, five cents per ton for every sixty days for ships and steamships, two cents per foot for every flat-boat, three cents per log for every raft, and three dollars for each and every flat-boat broken up or making cord-wood, planks, etc., within the corporate limits of the city of New Orleans.

SEC. 8. That all pirogues or other crafts of from five to fifteen tons trading with this city shall be required to take a license, as heretofore provided by law, to wit, twenty dollars for each of said vessels, and should the owner fail to take out such license he shall
11 pay a fine of fifty dollars and be prohibited from using said vessel until the license be paid.

SEC. 9. That all vessels employed in the towage of vessels to and from the sea shall be subject to a license for the facilities afforded them by the city of one hundred and fifty dollars, to be paid into the city treasury by the owner or owners thereof, under a license to be given by the administrator of commerce, mentioning the names and owners of the tow-boat-, under a penalty of two hundred and fifty dollars for failing to take out such license. Such vessels are prohibited from engaging in such business unless licensed.

SEC. 10. That any flat-boat, barge, or vessel, not including steamboats, employed in the transportation of brick, lumber, or other building materials, or in bringing produce from this and other neighboring parishes to this city, and measuring not over twenty-five tons, the levee and whartingers' dues shall be thirty dollars per annum; from twenty-five to fifty tons, sixty dollars per an-
12 num; over fifty, and not exceeding seventy-five tons, eighty dollars per annum; over seventy-five tons, and not exceeding one hundred tons, two hundred dollars; over one hundred tons, two

hundred dollars per annum; on every scow and coastwise pirogue and other vessels measuring not over twenty-five tons, not trading directly with the city, two dollars per trip.

SEC. 11. That this ordinance is not intended to be construed so as to interfere or impair the legal contracts heretofore made by the city with certain individuals or companies relative to the wharves and charges for the use of them, nor to repeal other ordinances not inconsistent with this ordinance, and that it shall take effect from and after its promulgation.

Contract Between the City of New Orleans and Joseph A. Aiken, Referred to and Made Part of the Foregoing Bill.

13 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Be it known that on this thirtieth day of May, in the year of our Lord one thousand eight hundred and eighty-one, before me, Samuel Flower, a notary public in and for the parish of Orleans, State of Louisiana, and official notary of the city of New Orleans, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the Honorable Joseph A. Shakspeare, mayor of the city of New Orleans, and herein acting in his official capacity as mayor; and also came and personally appeared Joseph A. Aiken, of the city of New Orleans, which said appearers declared as follows:

Whereas the council of the city of New Orleans, at its session held on the seventeenth day of May, 1881, adopted an ordinance
14 in the words and figures following, to wit:

MAYORALTY OF NEW ORLEANS,
CITY HALL, *May* 17, 1881.

(No. 7079, administration series.)

AN ordinance providing for the building and repairing of wharves and levees of the city of New Orleans, and for farming the revenues thereof.

SECTION 1. Be it ordained by the council of the city of New Orleans that the administrator of commerce shall, after the enactment of this ordinance, and after having given ten days' notice in the official journal that he will receive at his office sealed proposals for their sale, shall adjudicate, as provided for in section 26, and in accordance with the stipulation hereinafter contained, the revenues of the wharves and levees of the city of New Orleans, collectible at the rates as may be fixed upon all ships, vessels, steamships, steamboats, barges, flat-boats, and other water crafts of any and every description whatsoever, for the term of five years, commencing on the 29th day of May, 1881, and ending with the 28th day of May,
15 1886, upon the terms and conditions hereinafter set forth.

SEC. 2. That the wharves and levees, the revenues of the same to be sold under this ordinance, shall comprise the wharves

already constructed and existing in the first, second, third, and fourth districts of the city of New Orleans, from Toledano street to the lower limits of the city, which is the lower line of the United States barracks, excepting therefrom all ferry and nuisance wharves and all wharves granted to the New Orleans Pacific Railway Company, as well as the wharf granted to the New Orleans Elevator Company, until such time as the present franchise expires; and excepting generally all such wharves or portions of wharves and of the river banks, the exclusive use of which may now be enjoyed by private individuals or corporations under existing grants or leases until such time as said grants or leases may expire, after which time said lessee shall take charge of said elevator wharf on
16 same conditions as other wharves. All United States Government vessels shall be exempt from payment of wharfage dues.

SEC. 3. That the levee shall comprise the levees already existing in the first, second, third, and fourth districts of the city of New Orleans, extending from the river to the line of the street fronting the river; that is to say: In the fourth district, from Toledano to Adele streets, Water street, and from Adele street to Felicity road, Peters street; in the first district, from Felicity road to the junction of Peters with Water street, Peters street; from the junction of Peters with Water street to Terpsichore street, Water street; from Terpsichore to Calliope street, Pelie street; from Calliope to Julia street, New street; from Julia street to Girod Street, Pelie street; from Girod to Poydras street, Water street, and from Poydras to Canal street, Delta street; in the second district, from Canal to Custom-House streets, the street in front of the railroad depot; Custom-House to St. Louis street, the street in front of the sugar
17 sheds; from St. Louis to St. Ann street, Clay street; from St. Ann to Dumaine street, the street in front of the meat market, and from Dumaine to Barracks street, the Mobile and Texas railroad tracks; and in the third district, from Marigny to Mandeville streets, the street in front of the Marigny stores, and from Mandeville to the lower limits of the city, Peters street.

SEC. 4. That the person or persons to whom shall be adjudicated as herein provided the revenues collectible as may be provided shall accept the wharves, landings, and levees in the condition in which the same may be on the said 29th day of May, 1881, and that the said person or persons so accepting and taking possession of the said wharves, landings, levees, and bulkheads shall repair and always keep the same in good order and condition during the whole term of their contract.

SEC. 5. That the repairs of the wharves and bulkheads shall consist in repairing all holes in the flooring of the wharves and
18 bulkheads and inclined planes immediately upon their first appearance; in raising all portions of the wharves which may have sunk or which may sink to a level of the steamboat landing at Common street; in taking out and renewing all caps and stringers, piles, mooring-piles, fender-piles, bulkheads, etc., which may be found rotten or decayed; in building anew all wharves and bulk-

heads which from general decay may require the same, and to rebuild any and all wharves and bulkheads where the same now exist, or which may be constructed during the term of their lease, that may be damaged or destroyed, in part or in whole, from any cause whatsoever; and in extending into the river all wharves and bulkheads which may require extension, so as to have at all times a depth of water of twenty-five feet at the water line of each and every wharf used by ships and steamships, and a depth of water of twelve feet at the water line of each and every wharf used by steamboats, barges, and flat-boats.

19 SEC. 6. That in making the repairs to and in building new wharves the piles used shall be either of pine or cypress timber of the best quality, not less than eleven by eleven inches square at one end and nine inches square at the other end, which shall be driven not less than twenty feet into the solid ground, at distances of not more than ten feet from centres; the heads of the piles shall be squared according to the levels to be given by the city surveyor, and shall receive and support eleven-inch square caps, which shall be strongly fastened to each of the piles with rag-bolts, one inch square by eighteen inches long; these caps to be of the best quality of pine or cypress timber. The stringers shall be at least ten inches square, shall rest at right angles upon the caps at distances of five feet from centres, and shall be strongly fastened at each alternate intersection with the caps with rag-bolts seven-eighths of an inch square by sixteen inches long. These
20 stringers shall be of the best quality of pine or cypress timber. The planks for the flooring shall be of yellow pine of the best quality, free from sap, twelve inches wide by three inches thick, and not less than fifteen feet long; they shall be strongly fastened to each of the stringers with six-inch pressed spikes, two at each end of the plank and one at each intersection with the stringer, the joints between the planks of said flooring not to be more than three-fourths (¾) of an inch in width.

SEC. 7. That each and every wharf used by steamboats, barges, and flat-boats shall have an inclined plane or apron not less than thirty (30) feet in width projecting out of the knuckle row of piles of the wharf on the outside of said inclined plane and adjoining the last row of piles thereof; a row of fender piles shall be driven, which shall receive a cap of not less than eleven inches square, laid on a level with the cap of the inner row of piles, and on the top of said outer cap shall rest a fender cap twelve inches square,
21 which shall be fastened to the other two caps at distances of five (5) feet with screw-bolts of one (1) inch in diameter and of suitable lengths. On the outer edge of said inclined plane, at distances of eighty (80) feet apart and independent from the wharf, clusters of piles shall be driven, each cluster to be composed of four piles, which shall be bolted together with eight screw-bolts of one and a quarter inches in diameter and of suitable lengths; that the person to whom shall be adjudicated this contract shall repair and keep in good order and condition during the whole term of contract such inclined planes or aprons as do now exist; and, in case

there shall be no inclined planes as above required at the time of accepting the present contract, the person or persons so accepting shall cause said inclined planes to be built at his or their own expense, and shall keep the same in repair as aforesaid during the entire term of his or their contract.

SEC. 8. That at each and every wharf used for ships a row of
22 fender piles shall be driven adjoining the outer row of piles of the wharf with at least two screw-bolts of *of* one and a quarter inches in diameter; that on the front of each of said ship wharves two fender caps shall be placed, one on a level with the flooring of the wharf and the other at five feet above low-water mark; said fenders shall be twelve (12) inches square, and shall be fastened to the piles of the wharf with screwed bolts of one and a quarter inches in diameter; and the person or persons to whom shall be adjudicated the said contract shall repair and keep in good order and condition during the whole term of said contract such fender piles and caps as above required at the time of accepting said contract; the person or persons so accepting shall cause said fender piles and fender caps to be driven and placed as above required at his or their own expense, and shall keep the same in repair as aforesaid during the whole term of contract.

SEC. 9. That at each and every wharf used by steamships a
23 row of fender piles shall be driven adjoining the outer row of piles, which shall be fastened each with the outer row of piles of the wharf with at least two screw-bolts of one and a quarter inches in diameter, each and every alternate pile to be at least eight feet above the flooring of the wharf; that on the front of each of said steamship wharves two fender caps shall be placed, one on a level with the flooring of the wharf and the other at five feet above low-water mark, said fenders to be twelve inches square and to be fastened to the piles of the wharf with screw-bolts of one and a quarter inches in diameter; and the person or persons to whom shall be adjudicated said contract shall repair and keep in good order and condition during the whole term of contract such fender piles and fender caps as do now exist, and in case there shall be no fender piles and caps as above required at the time of accepting said contract the person or persons so accepting shall cause said fender caps and fender piles to be placed and driven as above required at
24 his or their own expense, and shall keep the same in repair as aforesaid during the whole term of said contract.

SEC. 10. That at all the wharves mooring piles at least twelve inches square shall be driven as follows: On the steamboat, barges, and flat-boat wharves single piles along the knuckle row of the inclined planes at distances of fifty feet from centres; on the steamship and ship wharves, and on the levee along the same, double piles wherever the city surveyor shall direct, each of the aforesaid mooring piles to be strongly fastened to the piles of the wharves with at least two screw-bolts of one inch in diameter, and those on the levee to be strongly anchored, and all to project at least four feet above the flooring of the wharves and the top of the levee; and the person or persons to whom shall be adjudicated said con-

tract shall repair and keep in good order and condition during the whole term of contract such mooring piles as do now exist; and, in case there shall be no mooring piles as above required at the
25 time of accepting said contract, the person or persons accepting shall cause said mooring piles to be driven and placed at his or their own expense, and shall keep the same in repair as aforesaid during the whole term of said contract.

SEC. 11. That the person or persons to whom shall be adjudicated said contract shall be bound to build all additional new wharves that may be necessary, provided he be not required to expend on such new wharves more than twenty-five thousand dollars in any one year, the said new wharves being calculated at the rate of twenty dollars per square and no more. The said person or persons shall be bound under said twenty-five-thousand-dollar clause to begin by the first of July, 1881, to connect all of the wharves of the first and fourth districts, commencing at Calliope street and running up stream until the elevator wharf is reached, and then commencing at the ferry wharf, opposite the meat market, and running down stream to Poland street, should the caving
26 bank of this section be so strengthened as to permit the same; and then to build all new wharves which may be ordered by the council in the fifth, sixth, and seventh districts. All ferry and nuisance wharves, and all wharves granted to railroad companies, are not included in the connection of said wharves. The term "new wharves," as expressed in this section, shall be construed as meaning new wharves where there are no wharves now existing, and shall not apply to the rebuilding of wharves to replace old ones, nor to the extension of old wharves into the river so as to obtain the depth of water as before specified at the water line of the wharves.

SEC. 12. That the person or persons to whom shall be adjudicated said contract shall be bound to accept the levees in the first, second, third, and fourth districts in whatever condition they may be in on the 29th day of May, 1881; to fill up the same during the first year of the contract, so as to place the outer edge of the same at
27 the level now established to a level of the steamboat landing at Common street; to grade the same from their outer edge to the paving of the street in the rear on a regular declivity; to cover the same with a sufficient thickness of hard substances, such as rock, gravel, or lake and oyster shells; to keep the same always in good order and condition by filling up all holes on their first appearance with hard substances, as above mentioned; to fill up with river sand all parts of the same which may cave in or sink, or sink below the grades aforesaid or which may be washed or destroyed by a storm or any other cause whatever, and cover said new filling with hard substances, as above mentioned, and whenever the batture shall form so as to require the levee to be extended on the order of the council to fill up such part or parts of the batture and build such levee as said council may deem necessary.

SEC. 13. That the person or persons to whom shall be
28 adjudicated said contract shall be bound to accept the bulkheads and revetment on the outside of the levees in

the first, second, third, and fourth districts in whatever condition they may be on the 29th day of May, 1881; to keep the same always in good order *in* condition during the whole term of said contract; to build all new revetments, which may be required in place of the old ones, which may be destroyed either by decay, by storms, or any cause whatever, with the best quality of one and a half inch yellow pine planks, double thickness, driven at least four feet into the solid ground and well braced into the levee, the whole in the usual and best workmanlike manner; to build during the first two years of his or their contract a piled bulkhead in the third district, from Marigny to Delery streets, in accordance with the plan of the city surveyor, to be seen in this office; the said bulkheads to be built of the best material and in the best workmanlike manner and to be always kept in the best order and condition during
29 the whole term of said contract, and to rebuild the same, whether destroyed by decay, caving of the bank or bed of the river, storms or otherwise.

SEC. 14. That the person or persons to whom shall be adjudicated said contract shall be bound to furnish all the necessary apparatus, and light with the electric light all the levees, landings, and wharves from Toledano street, in the fourth district, to Congress street, in the third district, the lamps or lights to be placed at no greater distance than 250 feet apart, and the height at which the same are to be erected shall be determined on by the city council; said lamps or lights shall be kept lighted each and every night from sunset to sunrise, and the class, quality, make, and power of said light to be designated by the city council. On the expiration of said lease the lessee or city may buy said electric apparatus at a value to be fixed by appraisers, one to be appointed by the city and one by the lessee, and on failure to agree they, the said appraisers, shall appoint an umpire.

30 SEC. 15. That all the extent of the port from Harmony to Seventh streets be, and the same is hereby, appropriated or set apart as a flat-boat landing, and from Seventh street to St. James street be, and the same is hereby, appropriated as a landing for steamships and sailing vessels; that all the extent of the port from St. James to Market streets be, and the same is hereby, appropriated as a landing for staves; that all the extent of the port from Market street to the gas-light company's wharf, at Race street, be, and is hereby, appropriated as a landing for steamships and sailing vessels; that all the extent of the port from the gas-light company's wharf to Robin street be, and is hereby, appropriated as a landing for coal-boats; that all the extent of the port from Robin street to the upper line of the New Orleans Pacific railway's wharf be, and the same is hereby, set apart and appropriated as a landing for steamships and sailing vessels; that all the extent of the port from the lower line of the said railway wharf to a point one
31 hundred and thirty feet below Calliope street is set apart and appropriated as a landing for steamships and sailing vessels; that all the extent of the port from one hundred and thirty feet below Calliope to St. Joseph streets be, and the same is hereby, ap-

propriated as a landing for flat-boats; that all the extent of the port from St. Joseph to Girod streets be, and the same is hereby, appropriated as a landing for barges; that all the extent of the port from Girod to St. Louis streets be, and the same is hereby, appropriated as a landing for steamboats; that all the extent of the port from St. Louis street to the Morgan's ferry landing, at St. Ann street, be, and the same is hereby, appropriated as a landing for steamships; that all the extent of the port from the Morgan's ferry landing to St. Philip street be, and the same is hereby, appropriated as a landing for sailing vessels; that all the extent of the port from St. Philip to Ursulines streets be, and the same is hereby, appropriated as a landing for luggers and other small crafts; that all that
32 extent of the port from Ursulines to Barracks streets be, and the [same] is hereby, appropriated as a landing for steamships and sailing vessels; that all the extent of the port from Marigny to Congress streets be, and the same is hereby, appropriated as a landing for steamships and sailing vessels; that all the extent of the port from Congress street to the United States barracks be, and the same is hereby, appropriated as a landing for vessels of all descriptions.

SEC. 16. That the bids of applicants under this ordinance shall specify in detail the amount of wharfage or levee rates or dues to be paid by ships and other sailing vessels, steamships, steamboats, flats, barges, rafts, and other crafts, with the time for which the charges are to be made, the prices agreed on between the city and the lessee or lessees to be specified in the contract. Vessels seeking this port in distress, using city wharves, shall pay half rates: Provided, That nothing in this section shall be construed so as to conflict with the provisions of section thirteen.

33 SEC. 17. That all works and repairs to be done under this ordinance shall be done under the supervision of the administrators of commerce and improvements and the city surveyor, and in case of refusal or neglect on the part of the lessee or lessees to make all said works and repairs it shall be the duty of the said administrators of commerce and improvements to have them made forthwith at the expense of said lessee or lessees.

SEC. 18. That all the works and repairs required to be done under this ordinance shall be commenced by the said lessee or lessees after five days' notice thereof has been given by the administrators of commerce and improvements and the city surveyor, and prosecuted as rapidly as possible.

SEC. 19. That, in case of failure or refusal on the part of the lessee or lessees to commence or finish the work or repairs within the time mentioned in the order or orders of the administrators of commerce and improvements and the city surveyor, the city council
34 shall have the right without further putting in default to order the said works and repairs to be done under the supervision of the administrators of commerce and improvements, and the city surveyor at the expense of the lessee or lessees, and further to hold him or them and his or their sureties liable for all damages caused by said default.

SEC. 20. That the city reserves the right to grant to railroad com-

panies the privilege of constructing such improvements and betterments and making such repairs to wharves that may be hereafter assigned to them, respectively, as in the judgment of the administrators of commerce and improvements and the city surveyor may be necessary to render such wharves suitable and proper for the transaction of the business of said railroad companies: Provided, That such improvements and repairs shall not cost the lessee or lessees a greater amount than if said wharves were constructed according to the specifications hereinbefore provided for. And the cost thereof, when approved by the said administrators, shall
35 be refunded to the said railroad companies by the lessee or lessees out of the revenues derived from said wharves as from time to time they are collected: Provided, That the lessee or lessees shall only be required to make such payments at the end of each quarter until the full amount is reimbursed.

SEC. 21. That the lessee or lessees shall be furnished by the city surveyor with an inventory of all spars, timbers, stage-planks, etc., used for mooring vessels and for staging for vessels, and shall give the city surveyor a receipt for the same, and shall at all times keep on hand for the use of vessels a sufficient supply of such materials, and shall return to the city at the expiration of his or their term of contract an inventory of equal amount and value of the same, it being well understood and agreed that the spars, stage-planks, etc., required by this section shall be used only on the wharves proper.

SEC. 22. That all the aforesaid wharves, landings, and levees shall continue subject to the police regulations now governing the
36 same and under existing ordinances, and no charge shall be made without the consent of both parties.

SEC. 23. That the lessee or lessees and his or their sureties shall, *in solido* be responsible for all damages which may be claimed by the city or by any party or parties who may sustain injury or damage in consequence of the neglect of the aforesaid lessee or lessees to comply with the requirements of this ordinance.

SEC. 24. That it is well understood that in case of failure on the part of lessee or lessees to commence or finish the work, or any part thereof, within the time fixed, the city council shall have the right to annul said contract without putting the said contractor or contractors in default, as required by article 1911 of the civil code or any other law, and without applying to a court of justice to annul the same, and without indemnity; and it is also well understood that in case the lessee or lessees shall at any time abandon the work, or not finish or complete the same in conformity with his
37 contract, the said lessee or lessees shall forfeit all claims he — may have for any part of the work done by him or them up to the date of his or their abandonment, and that the city shall be thereby released and discharged from any and all liabilities therefor; and it is also well understood that in case the contract be sold the lessee or lessees and his or their sureties shall be held and bound, *in solido*, to pay unto the city all loss or difference between the price at which the lessee or lessees originally contracted to per-

form the work, and the price at which it may be adjudicated at a resale or readjudication.

SEC. 25. That it is also well understood that it is not in the power of the city council, or any officer or department of the government of the city of New Orleans, to release the lessee or lessees from a strict compliance with this contract in all its conditions and in all respects.

SEC. 26. That the said lease shall be adjudicated to the
38 person or persons agreeing to charge or receive the lowest rate or rates of wharfage or dues thereof, and to pay annually to the city of New Orleans, in equal monthly installments, the sum of forty thousand ($40,000) dollars, thirty thousand ($30,000) of which shall be devoted to the payment and maintenance of a harbor police for the protection of commerce, etc., along the river front of the city, and the remaining ten thousand ($10,000) dollars to be set part and devoted exclusively to the payment of the salaries of wharfingers, contravention clerks, signal officers, and other employees on levees in connection with the department of commerce of said city, and in connection with the foregoing to keep the wharves lighted with electric lights, as hereinafter provided.

SEC. 27. That the lessee under this ordinance shall reimburse to such private individuals or corporations as may have constru-ed wharves at their expense, and have not heretofore been reimbursed therefor, the present cash value of such wharves, said value to be
39 assessed by the administrators of commerce and improvements and the city surveyor, or shall pay annually to such individuals or corporations a sum equal to interest upon such cash value at the rate of eight per cent. per annum, at the option of the lessees.

SEC. 28. That the person or persons to whom said lease shall be awarded shall give his or their obligation or bond, with good and sufficient security, to be approved by the city council, for the sum of one hundred thousand dollars, conditioned for the true and faithful performance on the part of said lessee or lessees of all duties and obligations imposed on him or them by this ordinance.

SEC. 29. No bid shall be entertained unless the bidder at the time of presenting his sealed proposal shall deposit with the administrator of finance the sum of $35,000 in currency or a certified check under the condition that the same shall be forfeited to the city, in case he or they refuse to comply with the terms and conditions of
40 this ordinance, and to sign the notarial act. The money so deposited shall be returned when the notarial act shall have been signed and the bond or obligation executed as provided for by this ordinance.

SEC. 30. That the person or persons to whom shall be awarded said lease shall not sell, subrogate, transfer, assign, set over, or sublease his or their right, title, or interest in the same to any person whatsoever without the consent of the city council being previously obtained; and any such sale, transfer, assignment, subrogation, or sublease without the consent of the city council shall subject the party so doing to penalties prescribed by this ordinance for viola-

tions of its provisions, and will authorize the city council, if deemed advisable, to declare the contract forfeited, and hold the party and his sureties liable in damages for violation of said contract.

SEC. 31. That it shall be the duty of the lessee or lessees to submit to the administrator of commerce on the first day of July of each year a sworn statement, substantiated by books and vouchers, setting forth a full account of their receipts and disburse-
41 ments during the fiscal year ending May 28th next preceding, and such statements shall show separately the receipts from each class of vessels, and also from the wharves herein proposed to be leased, and shall also show separately the cost of maintaining and repairing each wharf, and the cost of new or additional structures erected or constructed by said lessee or lessees.

SEC. 32. That from the elevator to Girod street there shall be placed one port privy in every second block or square, and from St. Louis street to the point opposite the United States mint there shall be placed two port privies in each block or square, and from said point to the lower limits of city one in every second block or square.

SEC. 33. That all existing leases or contracts for use of specially designated parts of wharves to steamship lines or other transportation companies be extended during the term of this lease, unless otherwise ordained by the city council.

42 SEC. 34. That the city council reserves the right to reject any and all bids, and to order a resale.

SEC. 35. That all ordinances, or parts of ordinances, conflicting with this ordinance be, and the same are hereby, repealed.

Adopted by the council of the city of New Orleans, May 17, 1881.

Yeas—Delamore, Fagan, Huger, Mealey, Walshe.

Nay—Fitzpatrick.

Absent—Guillotte.

JOS. A. SHAKSPEARE, *Mayor.*

A true copy:

M. McNAMARA, *Secretary.*

A certified copy of which ordinance No. 7079 is annexed hereto for reference.

And whereas the Honorable William Fagan, administrator of commerce of the city of New Orleans, proceeded to advertise for proposals in accordance with said ordinance, as appears by certified copy of said advertisement annexed hereto for reference:

And whereas, at a meeting of the city council of New Orleans, held on the 27th day of May, 1881, the following proposal of Jas. A. Aiken was submitted for the consideration of said council, to wit:

43 NEW ORLEANS, *May* 27, 1881.

To the hon. mayor and administrators of the city of New Orleans:

GENTLEMEN: I hereby propose to accept lease and contract of wharves and levees as stipulated in ordinance No. 7079, administration series, and dated May 17, 1881, ordinance herewith attached, to comply with all the terms and stipulations of said ordinance, and to

charge the same rate of wharfage as stipulated in ordinance, fixing and regulating the charges of January 19, 1875—ordinance herewith attached—with the exception that I will at no time charge ocean steamships more than at the rate of 15 cents per ton, and that for the third year of the lease I will reduce the rate on all ocean tonnage and on steamboats and barges and other licensed vessels employed regularly in transporting merchandise on the Mississippi river ten per cent., and that for the fourth and fifth years I will make a reduction of twenty per cent. each year on the rates named in the ordinance of January 19, 1875; and also that ocean vessels arriving in
44 ballast shall not be charged wharfage during the time they may be engaged in unloading, but which period shall not exceed five days from time of arrival, provided said ballast is sold to the city or wharf lessees, and also that vessels arriving in ballast and loading exclusively with grain shall not be charged more than five cents per ton for the first fifteen days, and an additional charge of one-third of one cent per ton for each additional lay day.

I herewith inclose my certified check for $35,000, and propose Captains J. W. Tobin, John J. Brown, J. H. Menge, *as* such others as I may hereafter name, should you require it, as my bondsmen.

Very respectfully, JOS. A. AIKEN.

Appended to which proposal and made part thereof was the following, to wit:

Ordinances fixing and regulating the charges for wharfage, levee, and other facilities afforded by the city of New Orleans to commerce. Ordinance [of] January 19, 1875.

SECTION 1. Upon all ships and other decked vessels and
45 steamships arriving from sea and landing or mooring at any wharf in the city the charges shall be as follows: On 1,000 tons and under, 20 cents per ton; excess over 1,000 tons, 15 cents per ton; steamships in Gulf of Mexico trade, 15 cents per ton.

SEC. 2. The same payments on ships or sail vessels shall be exacted as on steamships, and an extra charge of one-third these rates shall be paid by all sail vessels or steamships which may remain in port over two months, the same to be recovered before departure, and if they remain over four months an additional charge of one-third these rates per term of two months from arrival to departure.

SEC. 3. The wharfage dues on all steamboats shall be fixed as follows: Not over five days, ten cents per ton; each day after, $5 per day; boats arriving and departing more than once a week, 5 cents per ton each trip; boats laying up for repairs during the summer months, to occupy such wharves as may not be required for shipping, for 30 days or under, $1 per day.

46 SEC. 4. On barges, steamboat hulls used as barges, flat-boats, and other licensed vessels employed regularly in transportation of merchandise on the Mississippi river the wharfage rates shall be the same as charged now for steamboats in the same business, viz:

If in port eight days, ten cents per ton; after said eight days, $5

per day. Barges arriving and departing more than once a week shall pay only on each trip "5 cents per ton:" Provided also, That this resolution shall not apply to barges, flat-boats, and vessels that come to this port for a single trip, to be broken up or their use as carriers of merchandise to be discontinued at the end of trip.

SEC. 5. On flat-boats, barges, etc., fully or in part laden, the wharfage or levee dues shall be as follows: Flat-boats not measuring over 80 feet, $8; flat-boats 80 to 100 — $10; flat-boats 100 feet and over, $13; on each barge less than 70 feet and not over 20 tons, $8; on each steamboat hull used as a barge, $25; and an extra rate of wharfage shall be imposed at the same rate for every eight
47 days thereafter, recoverable at the commencement of the ninth day.

SEC. 6. Charges mentioned in preceding sections exigible only from such of said vessels as land or moor at the wharves and piers furnished by the city of New Orleans.

SEC. 7. Where there are neither wharves nor piers but merely the levee with suitable conveniences for making fast, the charge shall be for steamboats, $1.00 per day; for ships and steamships every 60 days, 5 cents per ton; for flat-boats, 2 cts. per foot; for every raft, 3 cts. per log; and three dollars for each and every flat-boat broken up for making cord-wood, planks, etc., within the limits of the city.

SEC. 8. All pirog-es or other craft of from 5 to 15 tons, trading with this city, shall be required to take out a license as provided by law, viz., $20 for each of said vessels; a fine of $50 and prohibition from engaging in such business unless licensed.

SEC. 9. On all vessels employed in the towage of vessels to and from the sea a license of $150; a penalty of $250 for failure
48 to take out such license and prohibition from engaging in such business unless licensed.

SEC. 10. On any flat-boat, barge or other vessels, not including steamboats employed in the transportation of bricks, lumber or other building materials, or in bringing produce from this and neighboring parishes to this city:

Not over 25 tons	$30	per	annum.
From 25 to 50 tons	60	"	"
From 50 and not over 75 tons	80	"	"
Over 75 and not over 100 tons	120	"	"
Over 100 tons	200	"	"

On every scow and coastwise pirogue and other vessels measuring not over 25 tons, not trading directly with the city, $2 per trip.

Ordinance 3109, A. S., May 11, 1875.

"The river front between the lower line of Greenville and Valmont street-, and between Dufassat and Robert streets, is especially set aside as a coal-boat landing. The levee dues on all flats and barges engaged in carrying coal and landing at the above-designated landing shall be three dollars per month, payable on arrival,

and the same amount for any portion of a month when the
49 boat is moved before its expiration. This charge is exclusive of wharfage charged when the flat or barge removes to another district."

Ordinances No. 3112, A. S., May 12, 1875.

"All barges arriving at this point laden with bulk grain or through freight will be allowed fifteen days before incurring charges for lay days."

A certified copy of which proposal is hereto annexed for reference.

And whereas at said meeting of the city council of New Orleans, held on the 27th day of May, 1881, an ordinance was adopted in the words and figures following, to wit:

"No. 7108, administration series.

"Be it resolved, That the proposition of Joseph A. Aiken for lease of wharves, etc., under ordinance No. 7079, A. S., be accepted."

A certified copy of which ordinance is annexed hereto for reference:

Now, therefore, the said Joseph A. Shakspeare, mayor of the city of New Orleans, acting in his official capacity and by virtue of his authority as such, and for and on behalf of the city of New
50 Orleans, and in pursuance of the provisions and intendment of said ordinance No. 7079, A. S., and in confirmation of the sale and adjudication made by the city council of New Orleans at its sitting on the 27th day of May, 1881, as will appear by reference to said resolution or ordinance No. 7108, A. S., copy of which is hereto annexed, does by these presents grant, bargain, and sell, for the consideration and upon the terms and conditions and under the stipulations appearing and stated in the said ordnance No. 7079, A. S., of date May 17, 1881, and also in the proposal made by the said Joseph A. Aiken, of date of May 27th, 1881, to and accepted by the city council, which ordinance and which proposal (the latter including the adoption of the rate of wharfage charges as fixed by ordinance No. 2948, administration series, adopted January 19, 1875, except as modified in said proposal are incorporated into this act and their stipulations in detail made part hereof, unto the said
51 Joseph A. Aiken, herein accepting for himself, heirs, and assigns—

The revenues of the wharves and lévees of the city of New Orleans, collectible at the rates as above fixed upon all ships, vessels, steamships, steamboats, barges, flat-boats, and other water crafts of any and every description whatever, for the term of five years, commencing on the 29th day of May, 1881, and ending on the 28th day of May, 1886.

And the said Joseph A. Aiken hereby binds himself, his heirs and assigns, to perform and execute said contract well and faithfully, and strictly in accordance with the specifications in said ordinances and proposal contained in and made part of this contract,

and at all times to abide by himself and hold his heirs and assigns amenable and subject to the terms, penalties, and conditions therein contained.

And now personally came and intervened herein John J. Brown, John W. Tobin, and John H. Menge, all of this city, who,
52 having read what is above written, declared that they do hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract or lease by the said Joseph A. Aiken and his faithful compliance with the terms and conditions of said ordinance No. 7079, administration series, and said John J. Brown, John W. Tobin, and John H. Menge, each for one-third of said amount, hereby bind themselves and their heirs in favor of the city of New Orleans in the sum of one hundred thousand dollars, lawful money of the United States of America, payable on demand to the mayor of New Orleans and his successors in office.

Now, the condition of the above-written bond or obligation is such that if the said Joseph A. Aiken shall well, truthfully, and faithfully perform and execute the present contract or lease in accordance with said ordinance No. 7079, administration series, then the above-written bond or obligation to be null and void, but otherwise to be and remain in full force and virtue.

53 The said J. J. Brown, Jno. W. Tobin, and John H. Menge hereby waive benefit of division and discussion granted by law to sureties.

Thus done and passed in my office, at New Orleans, the day, month, and year first above written, in the presence of M. McNamara and R. B. Matthews, competent witnesses, domiciliated in this city, who have hereunto signed their names with the said appearers and me, the notary, after due reading of the foregoing.

Original signed. JAS. A. SHAKSPEARE, *Mayor.*
JOS. A. AIKEN.
J. H. MENGE.
JNO. J. BROWN.
J. W. TOBIN.
M. McNAMARA.
R. B. MATTHEWS.
SAM'L FLOWER,
Notary Public & City Notary.

A true copy.
N. O., June 30th, 1881.
[SEAL.] (Signed) SAM'L FLOWER,
Notary Public.

54 *Amendatory of Contract of May 30th, 1881, Leasing Wharves, &c., Referred to and Made Part of the Foregoing Bill.*

STATE OF LOUISIANA, *Parish of Orleans, City of New Orleans:*

Be it known that on this third day of October, in the year of our Lord one thousand eight hundred and eighty-one, before me, Samuel Flower, a notary public in and for the parish of Orleans, State of

Louisiana, duly commissioned and qualified, and in the presence of the witness hereinafter named and undersigned, personally came and appeared the Honorable Joseph A. Shakspeare, mayor of the city of New Orleans, and herein acting in his official capacity as mayor, and also came and personally appeared Joseph A. Aiken, of the city of New Orleans, which said appearers severally declared as follows:

Whereas they, the said appearers, entered into and executed before me, the undersigned notary, on the thirtieth day of May,
55 A. D. 1881, a contract in accordance with and fulfillment of an ordinance adopted by the city council of New Orleans on the seventeenth day of May, A. D. 1881, being designated as No. 7079, administration series, and entitled "An ordinance providing for the building and repairing of wharves and levees of the city of New Orleans, and for farming the revenues thereof."

And whereas the said council of the city of New Orleans, at its session held on the thirteenth day of September, 1881, adopted an ordinance in the words and figures following, to wit:

No. 7335, administration series.

An ordinance amending ordinance No. 7079, A. S., and the wharf lease and contract.

Be it ordained that ordinance No. 7079, A. S., be amended so as to strike out all that portion of section (13) thirteen which follows the words "the whole in the best workmanlike manner," and commences with the words "to build during the first two years," and in lieu of the obligations therein entailed upon the lessee of the
56 wharves the said lessees be required to expend the sum of money which would be required to build the piled bulkhead in the third district, between Marigny and Delery streets, which said sum has been estimated at and is hereby fixed at fifty-nine thousand five hundred dollars ($59,500), in protecting the bank of the river between Hospital street, in the second district, and Congress street, in the third district, or at such other places as may be directed by the administrators of improvements and commerce and the city surveyor, so that permanent wharves can be maintained within the said space, and the ultimate connection of all the wharves in the said districts, so as to make one continuous wharf as contemplated by the contract, be rendered feasible and the permanency of such wharf secured, and in giving such additional strength and security and making such improvements to the wharves to be built as the administrator of improvements and administrator of commerce and the city surveyor may decide upon.

57 SEC. 2. That all of the provisions above and the charges herein provided be subject to the approval and acceptance of the wharf lessee and his sureties, and that upon his acceptance of the provisions of this ordinance and his approval thereof, together with the consent of his sureties, this ordinance and the charges herein provided shall become part of the contract of the

city of New Orleans with the said lessee, and the mayor is hereby authorized to have drawn up a notarial act, which shall embody the provisions herein, and together with the said lessee "sign the same."

Which said ordinance was duly promulgated in the official journal of the city of New Orleans on the 13th day of September, 1881, and a duly certified copy of which is hereto annexed for reference.

Now, therefore, the said appearer, Joseph A. Aikin, lessee of the the wharves of the city of New Orleans, under and in pursuance of the provision of said city ordinance No. 7079, A. S., and of the contract in accordance therewith passed before me, the undersigned
58 notary, on the 30th day of May, 1881, declared that he approves and accepts all the provisions contained in the said ordinance No. 7335, A. S., above recited and herein incorporated as part of this act; and it is hereby understood, agreed, and stipulated by and between him, the said Joseph A. Aiken, and the said Joseph A. Shakspeare, mayor of the city of New Orleans, acting in his official capacity and by virtue of his authority as such, and in pursuance of the special authority vested in him by said ordinance No. 7335, A. S., that the said ordinance No. 7335, A. S., entitled "An ordinance amending ordinance No. 7079, A. S., and the wharf lease and contract," adopted by the council of the city of New Orleans on the 13th day of September, 1881, and the changes therein contained shall become part of the contract of the city of New Orleans with the said Joseph A. Aiken, executed and passed before me, the undersigned notary, on the thirtieth day of May, 1881, and that the same are hereby accepted and adopted as part of said original contract.

59 And now personally came and appeared herein John J. Brown, John W. Tobin, and John H. Menge, sureties of the said Joseph A. Aiken in and under the aforesaid original contract, who, having taken due cognizance of the above, severally declared that they approve and accept the changes in said original contract herein made in accordance with the provisions of said amendatory ordinance No. 7335, A. S., hereby holding themselves as fully and firmly bound under said contract as herein amended as they were under said original contract executed and passed before me, the undersigned notary, on the 30th day of May, 1881.

Thus done and passed before me, the official notary of the city of New Orleans, at my office in said city, in the presence of F. P. Stuart and W. R. Barstow, witnesses of lawful age residing in this city, who hereunto sign their names, together with the said appearers and me, notary, the day, month, and year first above written.

(Original signed) JOS. A. SHAKSPEARE, *Mayor.*

60 JOS. A. AIKEN.
J. W. TOBIN.
F. P. STUART.

JNO. J. BROWN.
J. H. MENGE.
W. R. BARSTOW.

SAML FLOWER,
Notary Public.

A true copy.
N. O., November 1, 1881.
[SEAL.] (Signed) SAM'L FLOWER,
Notary Public.

61 *Subpœna in Chancery to Mrs. Catherine M. Aiken, Administratrix of Joseph A. Aiken. Issued March 25th, 1882.*

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon Mrs. Catherine M. Aiken, administratrix of Joseph A. Aiken, deceased, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of May, 1882, then and there to answer a bill in chancery filed against her and others, wherein The Ouachita and Mississippi Packet Company *et al.* are complainants and said Catherine M. Aiken, administratrix of Joseph A. Aiken, deceased, are — defendants.

Herein fail not, and have you then and there this writ with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice
62 of the Supreme Court of the United States of America, this 25th day of March, in the year of our Lord one thousand eight hundred and eighty two, and the 106th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND,
D'y Clerk.

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court on or before the first Monday of May, 1882; otherwise the bill may be taken *pro confesso*.

(Signed) T. V. COUPLAND,
D'y Clerk.

Marshal's Return.

Received March 25th, 1882, by the U. S. marshal, and on March 27th, 1882, I served a true copy of the within subpœna in chancery on Mrs. Catherine M. Aiken, administratrix of the estate of Joseph A. Aiken, deceased, by handing the same to her in person in the city of New Orleans.

(Signed) E. S. CURRY.
D'y U. S. Marshal.

63 *Subpœna in Chancery to John J. Brown. Issued March 25th, 1882.*

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon John J. Brown to appear before the honorable the judges of the fifth judicial circuit of the

United States of America, at a circuit court to be holden on the first Monday of May, 1882, then and there to answer a bill in chancery filed against him and others, wherein The Ouachita and Mississippi River Packet Company *et al.* are complainants and said John J. Brown and others are defendants.

Herein fail not, and have you then and there this writ with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 25th
64 day of March, in the year of our Lord one thousand eight hundred and eighty-two, and the 106th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND,
Dy Clerk.

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court on or before the first Monday of May, 1882; otherwise the bill may be taken *pro confesso*.

(Signed) T. V. COUPLAND,
Dy Clerk.

Marshal's Return.

Received March 25th, 1882, by the U. S. marshal, and on March 27th, 1882, I served a true copy of the within subpœna in chancery on J. J. Brown, the person herein named, by handing the same to W. S. Benedict, Esq., his attorney, in person in the city of New Orleans, who accepted service in behalf of said J. J. Brown.

(Signed) E. S. CURRY,
Dy U. S. Marshal.

65 *Subpœna in Chancery to John W. Tobin. Issued March 25th,* 1882.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon John W. Tobin to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of May, 1882, then and there to answer a bill in chancery filed against him and others, wherein The Ouachita and Mississippi River Packet Company *et al.* are complainants and said John W. Tobin and others are defendants.

Herein fail not, and have you then and there this writ with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 25th
66 day of March, in the year of our Lord one thousand eight hundred and eighty-two, and the 106th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND,
Dy Clerk.

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court on or before the first Monday of May, 1882; otherwise the bill may be taken *pro confesso*.

(Signed) T. V. COUPLAND,
D'y Clerk.

Marshal's Return.

Received March 25th, 1882, by the U. S. marshal, and on March 27th, 1882, I served a true copy of the within subpœna in chancery on the within-named John W. Tobin by handing the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Subpœna in Chancery to John H. Menge.

67 UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon John H. Menge to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of May, 1882, then and there to answer a bill in chancery filed against him and others, wherein The Ouachita and Mississippi River Packet Company *et al.* are complainants and said John H. Menge and others are defendants.

Herein fail not, and have you then and there this writ with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 25th day of March, in the year [of] our Lord one thousand eight hundred and eighty-two, and the 106th year of American Independence.

68 [SEAL.] (Signed) T. V. COUPLAND,
D'y Clerk.

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court on or before the first Monday of May, 1882; otherwise the bill may be taken *pro confesso*.

(Signed) T. V. COUPLAND,
D'y Clerk.

Marshal's Return.

Received March 25th, 1882, by the U. S. marshal, and on March 27th, 1882, I served a true copy of the within subpœna in chancery on John H. Menge, the person herein named, by handing the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Subpœna in Chancery to the City of New Orleans. Issued March 25, 1882.

UNITED STATES OF AMERICA:

69 The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summons The City of New Orleans, through its mayor, Joseph A. Shakspeare, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of May, 1882, then and there to answer a bill in chancery filed against it and others, wherein The Ouachita and Mississippi River Packet Company *et al.* are complainants and said City of New Orleans and others are defendants.

Herein fail not, and have you then and there this writ with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 25th day of March, in the year of our Lord one thousand eight hundred
70 and eighty-two, and the 106th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND,
Dy Clerk.

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court on or before the first Monday of May, 1882, otherwise the bill may be taken *pro confesso*.

(Signed) T. V. COUPLAND, *Dy Clerk.*

Marshal's Return.

Received March 25th, 1882, by the U. S. marshal, and on March 27th, 1882, I served a true copy of the within subpœna in chancery on The City of New Orleans by handing the same to B. T. Walsh, Esq., in person, in said city of New Orleans, the administrator of finance and the acting mayor of the aforesaid city, Joseph A. Shakspeare, the mayor of said city, being sick at the time of said service and unable to perform the duties of mayor at the time of said service.

(Signed) E. S. CURRY,
Dy U. S. Marshal.

71 *Rule for Injunction Pendente Lite. Entered & Filed March 25th, 1882.*

U. S. Circuit Court.

THE OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
vs.
CATHERINE M. AIKEN, Adm'x, &c. } No. 9878.

On reading and filing bill of complaint herein, and on motion of C. S. Rice and Kennard, Howe & Prentiss, of counsel for complain-

ants, it is ordered that the defendant show cause on said verified bill, and on such other affidavits as may be filed herein by the 3d day of April, 1882, why an injunction should not issue herein as prayed for in the bill, *pendente lite*, or why such other and further order should not be made as may be just, and that this motion be heard on Wednesday, April 5th, 1882, at 11 a. m.

Marshal's Return.

72 Received March 25th, 1882, by the U. S. marshal, and I served true copies of the within rule on the persons herein named in the following date and manner, to wit:

Catherine M. Aiken, administratrix of the estate of Joseph Aiken, deceased, personally, March 27th, 1882.

John H. Menge, personally, March 27th, 1882.

John J. Brown, personally, on W. S. Benedict, Esq., his attorney, who accepted service, March 27th, 1882.

John W. Tobin, personally, March 27th, 1882.

City of New Orleans, personally, on B. T. Walsh, Esq., administrator of finance and acting mayor, March 27th, 1882.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Rule for Injunction Reassigned.

Extract from the Minutes, November Term, 1881.

NEW ORLEANS, MONDAY, *March 27th*, 1882.

Court met pursuant to adjournment.

Present: Hon. E. C. Billings, district judge.

OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
vs.
MRS. C. M. AIKEN, Adm'x, *et al.* } No. 9878.

73 By consent of counsel the rule for injunction *pendente lite* herein, which is fixed for Wednesday, 5th proximo, is reassigned for Saturday, 8th April, 1882, at 11 a. m.

Hearing & Continuance of Motion for Injunction.

Extracts from the Minutes of April 13th, 1882.

OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
vs.
MRS. C. M. AIKEN, Adm'x, *et al.* } No. 9878

This cause came on to be heard upon the application of the complainants for an injunction *pendente lite* befor- his honor Don A. Pardee, circuit judge, and his honor Edward C. Billings, district judge.

Kennard, Howe & Prentiss and Chas. S. Rice for the complainants; W. S. Benedict and Bayne & Denegre for defendants.

And after hearing the evidence, it was ordered that the matter be continued for argument until to-morrow at 12 o'clock m.

74 *Hearing and Continuance of Motion for Injunction.*

Extract from the Minutes of April 14, 1882.

OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
vs.
Mrs. C. M. AIKEN, Adm'x, *et al.* } No. 9878.

This cause, as continued from yesterday, came on to be further heard on the complainants' application for a preliminary injunction, and was argued by John H. Kennard, of Kennard, Howe & Prentiss, on behalf of the complainants, and by George Denegre, of Bayne & Denegre, and W. S. Benedict, on behalf of the defendants, when it was ordered that the matter be continued till 17th instant at 12.30 p. m.

Note of Evidence. Filed April 13th, 1882.

OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
vs.
Mrs. C. M. AIKEN, Adm'x, *et al.* } No. 9878.

75 Note of evidence on hearing the application for an injunction.

Complainant offers affidavits of M. N. Wood, J. E. Bron, Andrew J. Carter, J. L. Carter, W. T. Scovill, E. A. Burke & documents therewith, J T. O'Pry, H. O'Pry, R. H. Smith, F. A. Blanks, A. Dugas, O. P. Schinkle.

For purposes of this hearing, affidavits and documents offered in case No. 9573, Leathers *vs.* Aiken, as stated in notes of evidence filed in said case on 7th and 8th November, 1881.

Defendants offer the same evidence and affidavits as offered by them in case No. 9573, Leathers *vs.* Aiken, as shown by notes of evidence in said case.

Contract of city of N. O. with J. A. Aiken & Co., Dec. 7, 1881.

Affidavits of Richard Sinnott, D. C. McCan, Chas. K. Bur-
76 deau, Jesse K. Bell, Lloyd T. Belt, M. W. McChesney & exhibts therewith, John W. Tobin, John J. Brown, Thos. N. Boylan, chief of police; Jerry Donovan, serg't of police; Louis H. Pilie, ass't city surveyor; George H. Kirk, John H. Menge, 2; Marcus J. Zunto. George O'Connor, A. P. Harrison.

Contract for electric lights.

Ordinance relative to N. E. R. R. Co.

Disclaimer of John Thorn for steamer Danube.

Disclaimer of John Thorn. Filed April 13th, 1882.

Now before the court comes John Thorn, sole owner of the steamboat "Danube," name- as one of the complainants herein, and disclaims any interest in the present controversy, and prays leave of

the court to withdraw his name from the bill of complaint herein filed as having been inadvertently inserted therein.

(Signed) JOHN THORN.

77 *Hearing & Submission of Motion for Injunction.*

Extract from the Minutes of April 17th, 1882.

OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
vs.
Mrs. C. M. AIKEN, A'm'x, *et al.* } No. 9878.

This cause came on to be further heard before his honor Don. A. Pardee, circuit judge, and his honor E. C. Billings, district judge, on the application of the complainants for an injunction *pendente lite*, and was argued further by the counsel for the respective parties, and submitted, when the court took time to consider.

Order. Injunction Pendente Lite Denied.

Extract from the Minutes of April 25, 1882.

OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
vs.
Mrs. C. M. AIKEN, Adm'x, *et al.* } No. 9878.

This cause came on to be heard before his honor Don.
78 A. Pardee, circuit judge, and his honor Edward C. Billings, district judge, on the application of the complainants for an injunction *pendente lite*, and was argued by counsel.

On consideration whereof it is ordered that the application be denied, and an injunction *pendente lite* be refused.

Appearance of Defendants.

Extract from Chancery Order Book, Monday, May 1st, 1882.

OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
vs.
Mrs. C. M. AIKEN, Adm'x, *et al.* } No. 9878.

The defendants herein, by W. S. Benedict and George Denegre, their solicitors, have this day entered their appearance to the complainant's bill of complaint.

79 *Answer. Filed June 5th*, 1882.

In the United States Circuit Court for the Fifth Judicial Circuit and Eastern District of Louisiana. In Equity.

THE OUACHITA AND MISSISSIPPI RIVER PACKET COMPANY
versus
MRS. CATHERINE M. AIKEN, Admi'x, *et als.* } No. 9878.

The answer of Mrs. Catherine M. Aiken, widow of Joseph A. Aiken, deceased, herein sued as administratrix of the estate of her deceased husband, but who has been discharged therefrom by due process of law; of John H. Menge; of John J. Brown; of John W. Tobin, and of Mary E. Aiken, wife of Charles K. Burdeau, herein appearing by authority of her said husband, and all doing business as copartners under the firm name of Joseph A. Aiken & Co., to the bill of complaint of the Ouachita and Mississippi River Packet Company, Marion N. Wood, and others, remaining herein as complainants:

These defendants, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, *these defendants* answering, say:

First. That these defendants believe the first part of said complainants' bill, wherein they aver they have an interest in and are owners of the steamboats named, and of the place or places where said steamboats trade and land, *are* correctly set forth in said bill, except as to John Thorn, owner of the steamboat "Danube," whose name has been withdrawn from this suit, and Edgar M. Vallette, owner of the steamboat "Maxie S.," who is without interest herein.

Second. That to the second part of said bill, wherein complainants aver that the city of New Orleans did, on the 17th of January, 1875, adopt an ordinance fixing and regulating the charges for wharfage, etc., in this city, they say that the same is correctly set forth, and more specially detailed in the exhibit referred to.

Third. That to the third part of said bill, wherein the complainants aver that on the 17th May, 1881, the said city of New Orleans adopted and promulgated an ordinance providing for the building and repairing of the wharves of the city of New Orleans, etc., they say that the same is correctly set forth in said complainants' bill; and they further answer that under and by virtue of special and general acts of the Legislature of the State of Louisiana the said city of New Orleans was and is duly empowered to pass any and all ordinances fixing and regulating charges for wharfage, and selling or leasing, repairing or rebuilding, the wharves of said city used by steamboats or other vessels navigating the Mississippi river, or its tributaries, and landing at, using, and enjoying said wharves, piers, etc., furnished by said city of New Orleans or its lessees, and that said rights have been maintained and sanctioned by law by the

mandates of the courts and by usage and custom since said port of New Orleans became necessary for the trade and commerce of steamboats, ships, and other vessels, a period of more than eighty years, and always at rates largely in excess of the present rates.

Fourth. To the fourth part of said bill, wherein it is averred that the landing for steamboats at said wharves was and is designated by the fifteenth section of said ordinance of May 17th, 1881, they say that the same is correctly set forth, but defendants do specially deny that the space so appropriated and set apart for steamboats is insufficient for the purposes of all steamboats trading at the port of New Orleans, or desirous of trading at said port, and they deny that said steamboats are there compelled to moor, but do so because
80 said landing is the most valuable of all on the city front, most convenient of access to passengers, most lucrative to the steamboats, most economical for freighters and shippers, and most desirable for steamboats and for all interested therein. They specially deny that any illegal charge, tax, or tonnage duty for such privilege is exacted or imposed for the conveniences afforded by said city and its lessees to said steamboats for so landing at such wharves, and there loading and unloading and making use of such artificial and convenient structures.

And these respondents admit that the substance of other sections of said ordinance, viz., the 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, and 26th, are correctly set forth in complainants' said bill of complaint.

Fifth. To the fifth part of said bill, wherein it is averred that due advertisement for bids under said ordinance was not made, respondents deny that but nine days' publication of said advertisement appeared, and aver that on the contrary ten days' publication was had; but it is true that on the day and at the hour therein named for the offering of bids the common council did, in due compliance with law, said ordinance, and said publication, accept the bid of Joseph A. Aiken, he being the only bidder, and that said acceptance was carried into effect thereafter, and the said contract was executed in writing before Samuel Flower, city notary, on the 31st day of May, 1881, a duly certified copy whereof has been annexed to said complainants' bill, and said bill correctly sets forth the consideration paid and to be paid, the work done and to be done, and the time the same is to exist.

And they admit by ordinance 7473, A. S., your respondents were recognized as the representatives of said deceased Joseph A. Aiken.

Sixth. That your respondents deny the averment in the sixth part of said bill that within the ten days' delay granted for bids or thereafter any proposal, *bona fide* or otherwise, was made agreeing to charge or receive lower rates of wharfage than those mentioned in the said proposition of said Joseph A. Aiken and duly accepted by said city of New Orleans.

Seventh. To the seventh part of complainants' said bill they most positively deny that said ordinances of January 19, 1875, and May 17, 1881, or the contract of respondents with said city of New Orleans, or either of them, are null and void, or in contravention of

the law and Constitution of the United States; and they deny that the amount of compensation awarded by said contract, passed in pursuance of said bid and said resolutions, which were themselves authorized by the charter of the city of New Orleans, granted by the Legislature of the State of Louisiana, imposed any duty or tax on tonnage or commerce, or that any other recompense or compensation for the use of said wharves, and the benefits accruing to vessels in the use thereof, is imposed, except what is a reasonable compensation for their said use; that no part of said sum so charged is designed for, used or intended to be used, for any purpose other than the construction, repair, and constant maintenance of said wharves, for the use and benefit of all vessels arriving at and departing from the port of New Orleans, and so landing at the wharves aforesaid, and of their cargoes in being laden and unladen upon said boats and wharves; and that all expenditures required to be made by your respondents, not only for the construction and improvement of said wharves, keeping them in proper repair, supporting the levees and foundation upon which they rest and are built, lighting same, policing and guarding and caring for the freight placed thereon, cannot be dispensed with in any manner or form, but that each and every part thereof is absolutely requisite and necessary for the use of the commerce of this port and for the said wharves, and for the vessels landing thereat and using the same.

They specially deny that any such ordinance exists as averred to be dated 27th July, 1881, and they specially aver the truth to be that the sum of ten thousand dollars per annum, required by respondents' contract herein complained of to be paid to wharfingers, contravention clerks, and others, is the sum budgeted for the purpose of paying said employés; that the expenditure required for the services of said employés exceeds said sum of ten thousand dollars; that their duties pertain solely to the benefit and are rendered in the interest of the said vessels landing at said wharves of the city of New Orleans, and in aiding and assisting them in the discharge and lading of their cargoes, in making room for the convenience of vessels arriving, and for other such purposes, all of which in
81 a large port of entry cannot be dispensed with, and are absolutely proper and requisite to further the interests of said vessels.

That they specially deny that the sum of thirty thousand dollars per annum required to be paid by respondents under their said contract, to be devoted to the payment and maintenance of a harbor police force for the protection of commerce along the river front of said city, is used for any other purpose whatever. And they aver that when the contract of respondents went into effect, by reason of a failure to make a proper provision for such police force in former years, there was on duty on said wharves only ten patrolmen, a force totally inadequate to quell the disturbances and strikes which frequently took place on said wharves and landings, and said patrolmen were insufficiently paid, and then only at long intervals, and

many months after their services had been rendered, thereby tending to lessen their energies and injure their efficient services.

That under and by virtue of the payments made by respondents under their said contract there are now engaged, and have been for some time, in active service upon said wharves and landings forty patrolmen, one sergeant, three corporals, two clerks and operators, and two porters on said harbor police force.

That the services of said force have proved of great value to the steamboat and shipping interests, and being paid promptly and regularly from the fund furnished by your respondent, the personnel of said force is of the highest grade.

And your respondents, further answering, say that the use of the electric lights upon said wharves, so far from being expensive and unnecessary, have proved of great advantage and convenience to steamboats, affording additional security to said steamboats, enabling them to discharge their cargoes by night, resulting in a great saving of time, and being of the greatest convenience to the passengers of said boats, and of security to the better protection of their cargoes.

That all of the expenditures herein complained of by said bill are incurred solely for the use and benefit of steamboats, ships, and other vessels using said wharves, and not for the benefit or advantage of the inhabitants of said city of New Orleans.

Eighth. To the eighth part of said bill of complaint your respondents say that the steamboats used or owned by said complainants are not required to land or moor at said public wharves, but may land at any other place or places in said port of New Orleans, and especially at any point or place below Congress street, in said city; that the places designated by the common council of said city for steamboats to moor and land is in the immediate central front of said city, at the head of its main business streets, approached by well-paved highways, within most convenient distance of all its large business, shipping, receiving, importing and exporting merchants, in whose interest and for whose benefit freights are received and delivered, and thereby saving great charges in drayage and transportation on land, and being within a stone's throw of the freight and passenger depots of the various railroad companies centering in said city of New Orleans, and being within easy access of the various hotels of said city for the use and convenience of the various passengers traveling to and fro upon the said steamboats.

That the said space *was* designated is the best of any existing upon the entire length of levees and wharves fronting the city of New Orleans and is worth to said steamboats and steam vessels a sum greatly in excess of the amount charged for the use and conveniences afforded by said wharves at said locality, and that the said city council have designated no other locality for the use of said steamboats other than as now designated, and that any other location would result in a great loss to said steamboats of vast sums of money, would be detrimental to the commerce of the port, and cause an injury which would be almost irreparable; that the discretion so exercised by said city of New Orleans was wisely and

prudently exercised, and the charge for the use of said steamboat wharves so made by said ordinances and contract is far less in proportion to their value to the conveniences and benefits attained and accrued and the expenditures saved than is or are the conveniences afforded by any other city or port on the Mississippi river or its tributaries in any of the States bordering thereon, and especially of the ports of Natchez, Vicksburg, Memphis, Cairo,
82 and St. Louis; that the present rate is much less than it has been since the year 1875, and prior to the year 1875 same was thirty-three per cent. higher than as now established, and had so been since New Orleans became a port open to commerce, and at the present time the facilities and conveniences furnished steamboats far excel what were ever before afforded.

That said wharfage charge is not in any manner or form a tax for the privilege of entering the port of New Orleans, for no law or ordinance exists which prevents steamboats from landing at any part or portion of said port, and of availing themselves of the right to land at the banks of said Mississippi river and there discharge cargoes and load cargoes upon their said boats free from wharfage, should they see fit so to do. And your respondents aver that so far from the general place of landing of steamboats being unsuitable, or the rates for the use of such wharves unreasonable, that all steamboats and their owners are willing to pay double the said rates rather than land elsewhere at said port of New Orleans and be permitted to land free.

Respondents aver that it is true that the right of said city to collect wharfage dues is limited to such reasonable compensation for the use of her wharves and landings as may be sufficient for the construction of necessary new works, new wharves, and keeping works and wharves in good condition, and they aver such reasonable compensation only is now charged for the use of such wharves, all of which have been constructed and reconstructed by said city and your respondents.

And respondents further aver that in their business as such lessees, for the first year of said lease, their expenditures in building and maintaining said wharves have exceeded their receipts from said wharfage rates by a sum in excess of eighty thousand dollars, and they fear such loss may, by reason of the shifting nature of the banks and levees of said river, be annually entailed upon them, "for that mighty stream frequently goes where it lists."

Ninth. Your respondents say that the amendment to their lease, made by said city on the 12th September, 1881, is correctly embodied in said complainant's bill, but they specially deny same was made for their benefit, or that they have or will derive any advantage therefrom; on the contrary, they aver said amendment was made by reason of the protests of the owners of property abutting on said river in the third district, and said amendment merely required a change in the manner of executing said work, and that the entire sum required by said lease to be there expended in improved wharves has been expended as required by said amendment.

Respondents deny that 3,000 feet of said wharves have been

granted to the Northeastern Railway Company with their consent, and they specially deny that said railroad has received any of said wharves, and specially deny any assent of respondents to any such alleged grant.

Respondents deny that they have failed to comply with their lease in the erection and maintenance of electric lights, and aver the fact to be that such electric lights are in full operation from Toledano street, in the fourth district, to Congress street, in the third district, at distances of 250 feet apart, and they specially aver that for the greater convenience of steamboats double the number of such lights are in operation on the steamboat landing than at any other part of said wharves.

Tenth. And your respondents, further answering, say that it is untrue that a rate of wharfage of six cents per ton on steamboats instead of ten cents is a reasonable compensation, and they aver the contrary to be the case; that said wharves cannot be annually rebuilt, as they are almost constantly required, nor maintained in proper efficiency at a less rate than as now charged.

And respondents aver the fact to be that the present lease was framed by all the commercial interests of the city of New Orleans, at the request of said city, composed of the Steamboat Captains' Association, Maritime Association, Cotton Exchange, Produce Exchange, Chamber of Commerce, Cotton Press Association, and Sanitary Association, and all the additional burdens and requirements of said lease, over and beyond that of any former lease of said wharves, were imposed therein, and same was submitted to public bid at six cents per ton on steamboats and found no bidder.

83 And respondents aver the fact to be that all steamboats and vessels using said wharves (excepting complainants and those they represent), being four-fifths of all, are fully satisfied with said wharfage rates, and pay the same cheerfully for the great privilege and benefits afforded by said wharves and facilities.

And these respondents deny all other matters in said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is not true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct.

And they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) W. S. BENEDICT,
GEO. DENEGRE.
Solicitors for Defendants.

Mrs. M. E. Burdeau, Catherine M. Aiken, John W. Tobin, John H. Menge, and John J. Brown, being duly sworn, depose and say that they are defendants named in the foregoing answer subscribed to by them; that they have each read the same and know the con-

tents thereof, and that the same is true of their own knowledge, except as to the matters and things therein stated on information and belief, and as to those matters and things they verily believe them to be true.

(Signed) CATHERINE M. AIKEN.
" MARY E. BURDEAU.
" CHAS. K. BURDEAU,
To authorize my wife.
" J. W. TOBIN.
" J. H. MENGE.
" JOHN J. BROWN.

Sworn to and subscribed before me this 2d day of June, 1882.
[SEAL.] (Signed) ANDREW HERO, JR.,
Not. Pub.

84 J. F. Hicks, of Memphis, Tenn., being duly sworn, states that he is master and owner of the steamer Henry Frank, the largest carrier on the Mississippi river; that he is well informed as to the wharfage charges at the various towns and cities along said river, and the facilities given to steamboats at their landings; that owing to the peculiar construction of the wharves at New Orleans, and the wide, expansive levees, and superior conveniences for mooring and making fast boats frequently coming broadside against the wharves, they are enabled to discharge and receive cargo with greater rapidity and with less labor than at any of the other ports named, and for that reason he considers that it is cheaper for boats to pay ten cents per ton wharfage in New Orleans than a less rate or even free wharfage would be to them at other ports. The time of his boat is frequently during the busy season worth at least a thousand dollars per day, and he can always unload and load his boat here in at least one day's less time than he could in any other port that he knows of.

The wharves and levees assigned to steamboats in New Orleans are located in the most desirable portion of the harbor, bringing the boats in near proximity to shippers, consignees, and the many parties with whom they most do business, and for that reason are greatly of more value and service to boats than if they were located in a remote portion of the harbor. I was owner and master of the steamer Mary Bell that brought in the largest cargo of cotton and cotton seed that was ever brought to New Orleans, say 7,016 bales cotton and 19,300 sacks cotton seed; this immense cargo was discharged, and I took in up freight to the amount of 700 or 800 tons and left on the same day. I am now master and owner of the Henry Frank. During this season I brought in 9,226 bales of cotton and discharged it in about eleven hours.

I know of no port in the United States where I could have discharged the above-named cargoes in three days, and the expense would have been tripled.

J. F. HICKS.

P. J. O'Reilly, of New Orleans, being duly sworn, states that he is master and owner of the steamboat "Cherokee;" that he has been a steamboatman for many years; that he is well acquainted with the accommodations and facilities afforded to boats at all the principal cities on the Mississippi river and tributaries, and also with those of the principal seaports of the United States; that at no place that he has visited is there such good facilities given for unloading and loading steamboats as are found in New Orleans. The time of steamboats is very valuable, frequently being worth over one thousand dollars per day. There is no other port at which our large packets could come in the morning with full loads, as they frequently do here, and discharge cargo and leave in the evening with upstream loads. He once unloaded the steamer "Mary Bell" at New Orleans in one day, when her cargo consisted of 7,016 bales of cotton and 19,300 sacks of cotton seed, and sent her out the same day with an out cargo of 700 or 800 tons. Last season he unloaded the steamer "Henry Frank" in about eleven (11) working hours. Her cargo consisted of 9,226 bales cotton and 250 tons of other freight. It would have taken a great deal more time and cost much more for labor to do such work at other ports; the labor can be done cheaper and in less time here than elsewhere, because of the better facilities in the way of wharves and levees that are found here. The wharves and levees assigned to steamboats in New Orleans are in the very best possible location for them, because of their nearness to the many parties with whom the boats must do business, the easy access to and from them, the great room given in which to handle cargo, the better condition of the streets leading to and from them, enabling freight to be handled to and from them with more dispatch than could be done elsewhere in the harbor. These facilities are of great value to steamboats, and could not be enjoyed by them in any other portion of the harbor.

P. J. O'REILLY.

85 John W. Tobin, of New Orleans, being duly sworn, states that he has been master and owner of steamboats for many years; is well informed concerning the wharfage charges at the various cities along the Mississippi, and as to facilities and accommodations given to boats at these ports. There is no other place in the country, that he is aware of, where, owing to the peculiar construction of the wharves and wide, roomy levees, boats can receive and discharge cargo with so much celerity and with so little labor as in New Orleans. He considers that these advantages largely overbalance any excess of wharfage that New Orleans may charge over any other port. During the busy season one of his boats, the "J. M. White," runs at an expense exceeding one thousand dollars per day. She usually arrives here on Thursday morning with the equivalent of 7,000 bales of cotton, discharges her cargo, and takes a return cargo, leaving about 5 o'clock on the same day. He does not believe that he could do this work in any other port on the Mississippi river or Ohio in less than two days. He has within a year ran boats to St. Louis and Cincinnati, and whilst the wharfage proper

charged by either of these cities is not so high as is charged in New Orleans, yet he considers it higher when accommodations and facilities are taken into consideration. He found that in each of these cities he had, in addition to the charges made by the city, to pay for the privilege of landing at wharf-boats, which additional charge was in reality a wharfage charge, and when added to that made by the city the two sums were greater in amount than the one wharfage charge made on the same boats by New Orleans. He is now, and has always been, satisfied with the rate of wharfage paid by him in New Orleans, and would consider it a great misfortune if the wharf revenues were so reduced as to prevent the city from maintaining its wharves up to the best standard. In addition to owning the "J. M. White" he also owns half of the "Ed. Richardson" and "Laura Lee," and is part owner of the "Thompson Dean," and is one of the largest wharfage payers on steamboats coming to the wharf at this port. He considers that the central location of the wharves assigned to steamboats, their proximity to the parties with whom he must do business, the easy access, and better streets leading to said wharves, thereby affording greatly better accommodations and facilities for the quick and economical transaction of his business than if they were located at a more remote part of the city, are of great benefit and value to them, and that he would rather pay the present or some much higher rates of wharfage at the present steamboat landing than to have free wharfage at other portions of the city.

JOHN W. TOBIN.

W. E. Huger, being duly sworn, deposes and says, that he is administrator of public accounts of the city of New Orleans; that under and by virtue of the law regulating the duties of his office he is in possession of the books of the city of New Orleans referring to its municipal affairs; that in the books of his office is contained the official records of receipts and expenditures connected with the wharves and landings of the city of [New] Orleans; that he has carefully and correctly, from said official records, had drawn off a statement of such receipts and expenditures of the wharves and landings in front of the city of New Orleans from the 4th April, 1870, to the 1st May, 1875, during which period of time such wharves and landings were exclusively under the administration and control of the city of New Orleans, showing the receipts and expenditures during said period of time, and same is hereto annexed as Exhibit A.

W. E. HUGER,
Administrator of Public Accounts.

86 EXHIBIT A.

Statement of Receipts and Expenditures of Wharves and Landings from April 4, 1870, to May 1, 1875.

April 4, 1870, to December 31, 1874, four years and nine months:

Bonds issued	$1,044,000 00
Interest paid	201,054 50
Expenditures—cash	796,610 01
	$2,041,664 51
Collections by city	1,206,326 84
Excess of expenditures	$835,337 67

January 1, 1875, to May 1, 1875, four months:

Expenditures	$96,810 94
Collections by the city	65,512 89
Excess of expenditures	$31,298 05

DEPARTMENT OF PUBLIC ACCOUNTS,
NEW ORLEANS, *July 13th*, 1881.

I hereby certify the foregoing to be a true extract from the records of this office.

WM. E. HUGER,
Administrator of Public Accounts.

Blayney T. Walshe, being duly sworn, deposes and says that he is administrator of finance of the city of New Orleans, and one of the members of the common council of said city; that the bid of Joseph A. Aiken under ordinance No. 7079, administration series, was the only bid received by the city of New Orleans, in accordance with the terms and conditions of said ordinance, and the same was accepted by the city of New Orleans, and, in the judgment of affiant, the same was a proper and just bid in the premises, and gives but reasonable compensation for the services required to be rendered and work performed by said Aiken; that on the day following the acceptance of said bid, viz., the 28th May, 1881, there was received in the office of affiant, as administrator of finance, a check as accompanying a bid made on said date for the contract under said ordidinance No. 7070, and said check not being certified could not be received by affiant, and said bid was therefore not opened or considered by said common council.

B. T. WALSHE,
Admn'r Finance, City of New Orleans.

William Fagan, being duly sworn, deposes and says that he is administrator of commerce of the city of New Orleans; that in pursuance of ordinance No. 7079, administration series, dated May 17, 1881, after having given ten days' notice in the official journal, the

"Daily States," that he would receive sealed proposals for the sale of "the building and repairing of wharves and landings of the city of New Orleans, and for the farming of the revenues thereof," he received but one bid, viz., a bid from Joseph A. Aiken, of the city of New Orleans, duly accompanied by a certified check, as required by said ordinance No. 7079, and at a lower rate for the contract than that which had existed between the said city of New Orleans and Henry Ellerman, the preceding lessee.

That at a meeting of the common council of the city of New Orleans held on the 27th May, 1881, in the office of the mayor of said city, the bid of said Joseph A. Aiken was opened, and it being the only bid, and it being in all respects conformable to said ordinance No. 7079, and satisfactory to the council of the city of
87 New Orleans, the same was, after due deliberation, accepted by the said common council, and thereafter, in pursuance thereof, a contract was made thereunder by the said city and said Aiken before Samuel Flower, city notary; and deponent further says—

That he has been engaged in business as a merchant in the city of New Orleans during many years; that he has been interested in steamboats and steamboating; that he is aware of the interests of commerce, and with the wharves and landings of the city of New Orleans, so contracted for by Joseph A. Aiken, and that without the same the commerce of this port could not be conducted and great expense would accrue thereby; that the amount of expenditure necessary to rebuild and repair and keep in repair the wharves and landings of the city of New Orleans is much greater than in much larger cities of this Union, by reason of the immense body of water of the Mississippi river and its great depth at the city of New Orleans, the eddies and currents thereof, and the treacherous nature of the bottom of said river, upon which the foundations of wharves and landings must necessarily rest; and that by reason of the shifting nature of said bottom and the eddies and currents of said river said wharves and landings are required to be constantly renewed and daily overlooked and repaired; that your deponent is satisfied from his knowledge of said wharves and landings, of the interests of the commerce of this port, and of the amount of wharfage charges under ordinance No. 2948, administration series, that the charge for said wharfage is a just and reasonable compensation for the use of said wharves and landings, allowing little, if any, margin for profit to the contractor, Joseph A. Aiken; and deponent further says—

That he examined the condition of said wharves during the week preceding the 29th May, 1881, and found that by reason of the high stage of water on the river and other causes the wharves and landings had been greatly undermined, many of them have sunken, and that when the river falls many of them will be swept away by the force of the current and caving banks, and it will be necessary to entirely reconstruct the same, entailing a vast expenditure of money.

WILLIAM FAGAN.

Personally came and appeared before me, the undersigned authority, A. Walker, Jr., of the firm of Hearsey & Craighead, who, being duly sworn, deposes and says that he is connected with the Daily States, a newspaper published in the city of New Orleans; that the nine newspapers, marked from "one" to "nine," and presented to me, commencing on the 18th May, 1881, and ending with the 27th May, 1881, viz., on the 18th, 19th, 20th, 21st, 23d, 24th, 25th 26th, and 27th days of May, and that owing to an intervening Sunday nine publications were made during the said ten days, *same* were printed and published by said newspaper, the Daily States; that the official advertisement therein, being ordinance No. 7079, administration series, and the advertisement headed "municipal advertisement," were printed and published by said paper at the respective dates named, in accordance with instructions received from the city of New Orleans, and said newspapers were purchased of said Daily States for account of Josheph A. Aiken, one of defendants herein.

HEARSEY & CRAIGHEAD.
A. WALKER, JR.

Personally came and appeared before me, the undersigned authority, R. B. Matthews, of the city of New Orleans, who, being duly sworn, deposes and says that he is one of the local reporters of the New Orleans Picayune, a newspaper printed and published in the city of New Orleans; that he is a stenographer, and was present at the various meetings of the committee of the New Orleans Produce Exchange, Cotton Exchange, Maritime Association, and others, held for the purpose of discussing and preparing an ordinance to be presented to the city of New Orleans for adoption, concerning the wharf repairs and improvements and collection of the revenues thereof; that, being shown "Exhibit C," made part of this his affidavit and containing a report of the proceedings of said committees, deponent says that the same were taken down in shorthand by him, and that they were then written out in longhand and furnished by him to the New Orleans Picayune and published in said newspaper, and that the said reports as published and found in Exhibit "C" are true and correct abstracts of the proceedings held by said committees, and that the facts therein set forth are truly stated.

88

R. B. MATTHEWS.

James Prague, being duly sworn, deposes and says that the steamboat Natchez, when not laid up, plies regularly between the port of New Orleans and ports of the State of Mississippi and intermediate ports on the Mississippi river; that her landing in the city of New Orleans is at the wharf erected near the front of Canal street, where she lays, loads, and unloads her cargoes, and makes use of said wharves there erected for the convenience and protection of commerce.

That the steamboat Ed. J. Gay likewise plies in the same trade, and in other trades, and has a like landing at the city of New Or-

leans, which is used by her in like manner and form as by the Natchez; and deponent further says—

That on 29th May, 1881, the day on which defendant, Joseph A. Aiken, assumed control of the public wharves and landings of the city of New Orleans the same were in a dilapidated and ruinous condition, arising from the immense body of water of the Mississippi river, then almost overflowing its banks, with a rapid current which had undermined the foundations in a great many places of the said wharves and landings, and caused the planks, stringers, and paraphernalia of said wharves to be loosened, and required the most watchful care in order that accidents might be prevented, and also from the effects of storms, wear and tear, and the natural deterioration of material.

That an immense expenditure of money will be requisite and necessary, as soon as the waters of said river fall to such degree as to permit work being properly done, in order to renew and build anew in numerous places the said wharves and landings; and deponent further says—

That he has been engaged for many years on the wharves and landings of the city of New Orleans, as an employé of said city of New Orleans, as one of the common council of the city of New Orleans, and as an employé of Henry Ellerman, Esq., late lessee of the wharves and landings, from the year 1875 to the year 1881.

That he is well acquainted with said wharves and landings; that it is his duty to ascertain the number of boats landing and departing at said wharves, and make use thereof, ascertaining their tonnage and personally collecting the bills for wharfage dues; that from the receipts of said wharves in years past and the expenditures absolutely necessary to keep said wharves and landings in proper order and condition, affiant states that the amount of wharfage dues fixed by the common council by said ordnance No. 2948 of the administration series, dated January 19, 1875, is an extremely reasonable charge, and not beyond a proper compensation for the use of said wharves for convenience of steamboats, steamships, and other water craft.

That he was an employé of Henry Ellerman, Esq., late lessee, for five years, who collected wharfage dues at a greater rate than that contracted for by Joseph A. Aiken, and said Henry Ellerman declined to bid again upon said wharf lease, and declined to have any further connection therewith.

J. B. PRAGUE.

Max Kenison, a resident of New Orleans, being duly sworn, says he has been owner and master of steamboats for many years; is now manager of the New Orleans and Opelousas Packet Company; is familiar with the wharfage accommodations of this and other cities on the Mississippi river; considers that because of the better facilities and accommodations given steamboats in New Orleans that the wharfage charged steamboats was as reasonable as are charged elsewhere, and is well satisfied with the rates of wharfage charged

89 in New Orleans. The wooden wharves and wide roomy levees permit boats to do more work and with less labor than at any other point he is aware of; considers that the wooden wharves and also the levee room behind them are absolutely necessary to enable boats to receive and discharge cargo with economy and dispatch; has always felt the necessity of more and better light on the levees and wharves and also for more police protection; there has hardly been a season that he and other steamboat owners and masters have not had to call on the city authorities and demand that more police protection be given to steamboats doing business at the wharves—the general answer to which was that the city had no money to pay more men than was already given; has no doubt that the interest of steamboat owners will be greatly benefited by improved lights and more police force on the levees and wharves.

M. KENISON.

SURVEYOR'S OFFICE, ROOM NO. 19, CITY HALL,
NEW ORLEANS, *May 26th*, 1881.

To Hon. Wm. Fagan, administrator of commerce:

SIR: In compliance with your request to re-examine the wharves, bulkheads, and levees of our river front, I have the honor to report as follows:

The high stage of the river prevents my ascertaining anything of the true condition of the understructure of the wharves. What is here within are facts only of their upper structure.

Wharf head Eighth street blocked and leaning towards the river; flooring repaired and in good condition.

Wharf head of Seventh street blocked and sinking.

Wharf head of Sixth street is in good condition. Its approach is planked—the planks of which are old and decayed. They should be taken away and the approach ballasted.

The ship wharf extending from between Fifth and Sixth to Second street is blocked at its upper end. The flooring is good, but the apron is old and well worn. That portion of it between Fifth and Fourth streets partly blocked and flooring in fair condition, but apron is old and considerably worn. That portion at the head of Fourth street needs six or twelve new planks in the flooring, and many of the planks are loose—an indication of decayed stringer. That portion between Fourth and Third streets blocked and sinking; two new mooring posts are needed; near Third street ten new planks are required. That portion at Third street is in fair condition. That portion between Third and Second streets needs about one dozen new planks in flooring.

Wharf head of Second street settled unequally in several places, but its flooring is good.

Wharf below the salt wharf, flooring in fair condition, but apron needs considerable repairs.

Wharf between First and Soraparu streets and towards Soraparu street sinking; its flooring is good. The wharf is partly blocked.

Old Dominion wharf, between Soraparu and Jackson streets, upper

end is blocked and is in need of much repair. The rest of the wharf is settled in many places and its flooring needs some new planks, while old ones need more spiking, being quite loose.

The long steamship wharf from Jackson to Nun street, upper end, near Jackson and Josephine streets, is blocked [and] has settled unequally, showing considerable depressions. The lower end, between St. Mary and Nun streets, the same as the upper end. The flooring of this entire wharf is in good condition.

The levee between Josephine and Nun streets needs considerable filling on account of the high grade of the Belt railroad track.

The bulkheads of the fourth district are in fair condition.

Wharf No. 36, between Nun and Celeste streets, blocked half way out from the bulkhead; the rest, whole piles. It has sunk in one place, which at present is in a weak condition. The flooring is fair.

90 Wharf No. 35, head of Celeste street, blocked half way out from bulkhead; flooring needs some new planks, and many of the old planks are loose, needing more spiking.

Wharf No. 34, between Celeste and St. James streets, blocked half way from bulkhead or line of level; flooring in good condition; one new mooring post is needed.

Wharf No. 33, between St. James and Market streets, blocked half way out from bulkhead; planks good, but some of them are loose, needing more spiking.

Wharf No. 32, head of Market street, two-thirds of which is blocked; planks and flooring good, but some of them are loose and need fastening.

Wharf No. 31, between Market and Richard streets, blocked half way out from bulkhead; flooring good, but many planks need fastening; two mooring posts are also needed.

Whaf No. 29, between Richard and Orange streets, blocked half way from bulkhead; new planks are needed in the flooring, while many old ones are loose; one new mooring post needed.

The connection of this latter wharf with wharf No. 28 has sunk very much; its flooring is good.

Wharf No. 28, head of Orange street, blocked half way out from bulkhead; many planks are loose.

Wharf No. 27, between Orange and Race streets, blocked half way out from bulkhead; the planks are good, but some of them are loose; one new mooring post is needed.

Wharf between Robin and Henderson streets blocked half way out from line of bulkhead; one new mooring post is needed; the whole wharf is slightly depressed; the flooring is fair, but some of the planks are loose.

Wharf just above Henderson street blocked half way out and is much depressed in some places; flooring fair, but some planks are loose; one stringer is decayed badly.

Wharf No. 20, head of Terpsichore street, blocked half way out; some sixteen or twenty new planks are needed, some depressions of surface exist, and many planks are loose; three stringers are badly decayed.

The approach to this wharf is planked, which is much decayed; it should be removed, the approach filled with sand and covered with rock or gravel.

Wharf No 19, between Terpsichore and Thalia streets, blocked half way out, depressions exist, and some thirty new planks are needed while others are loose; the approach should be filled and then covered with rock or gravel.

Wharf No. 18, between Terpsichore and Thalia streets, blocked half way out and has settled unequally; about thirty-four new planks are needed in the flooring and others are loose; the planking of approach is badly decayed; it should be taken away and the approach filled with sand or earth and covered with rock or gravel.

Wharf No. 17, between Terpsichore and Thalia streets, blocked half way out and leaning outwards; about twenty-one new planks are needed and others are loose; the approach needs repair.

Wharf No. 16, just above Thalia street, piled; about twelve new planks are needed and many old ones are loose; the approach to same needs repair.

The bulkheads of the first district are very rickety; the levee is in fair condition.

Steamship wharf, from Thalia to Calliope, piled; about 150 new planks are needed in the flooring and many planks are loose.

Wharf head of Calliope street piled; flooring fair and some of the planks are loose.

Barge wharf, extending from just above Delord street to near Lafayette street, needs a number of new planks in the flooring, and many of the old planks are loose; several new stringers are needed; the apron shows a need of new planks and general repair.

Steamboat wharf from Lafayette to Canal street blocked and piled; some of the planks are loose and some need replacing by new ones, while its apron needs much repair.

The levee thus far is in fair order.

91 Steamboat landing, from Canal to St. Louis streets, mostly blocked or cross-capped, and in need of the usual daily repairs—the taking out of planks broken through by driving over the wharf.

Steamship wharf, from St. Louis to midway, in front of Jackson square, blocked. Some planks are loose and the flooring requires the usual daily repairs.

Picayune tier, from midway, in front of meat market to St. Philip street, mostly blocked, and requires new fenders, four new mooring-posts, and many new planks in the floor, while many old ones are loose.

Wharf, lower 16, opposite Ursuline street, partly blocked and rebuilt last November, is commencing to cave.

Wharf, lower 17, just — Hospital street, partly cross-capped, built last November, is caving.

Wharf, lower 18, just below Hospital street, entirely cross-capped, and built last November, is in tolerably fair condition, though commencing to cave.

Wharf at head of Mandeville street, built last November, has entirely caved. The planks have been saved and stored upon the levee.

Wharf *at* between Mandeville and Spain streets, ditto.

The steamship wharf from Spain to Enghien streets was built last November and is in fair condition, but commencing to cave.

Port-street wharf, built last November, is entirely caved; its planks have been stored upon the levee.

Wharf between Port and St. Ferdinand, ditto. Wharf head of St. Ferdinand almost entirely caved, but none of its planks have been removed.

Wharf opposite the "Levee Steam Cotton Press" is nearly entirely caved. The lessees are storing its planks upon the levee.

Wharf at Montegut street, caved. None of its planks are removed.

Atlantic Press wharf, ditto.

Louisiana-street wharf, ditto.

Piety-street wharf, ditto.

Desire-street wharf, ditto.

The bulkheads of the second and third districts are [in] good condition.

Remarks.

Blocking and cross-capping are means employed in bringing settled wharves or portions of wharves to a desired level, and when tops of piles have decayed the decayed portion is removed and replaced by a sound piece of timber having the original dimensions of the decayed portion. This style of work, when done well, is preferable to new piling. A singularity is the covering of the wharves during high water, and this while stationary for nearly a month. They have formerly caved, and are expected to cave when the water has well receded. I may as well remark that the General Government piling is loosening and may go entirely when the water falls.

Very respectfully,

(Signed) D. M. BROSNAN,
City Surveyor.

I hereby certify that the foregoing is a true and correct copy from the books in this office.

Surveyor's office, New Orleans, July 19, 1881.

JNO. J. FITZPATRICK,
Secretary and Chief Clerk.

92 SURVEYOR'S OFFICE, ROOM NO. 19, CITY HALL,
NEW ORLEANS, *November 3d*, 1881.

This is to certify that the nature of the bank from Hospital to Delery streets is as follows, to wit:

1st. From Hospital to Louisa streets the bank is a caving bank of a very bad nature and upon which no work, such as wharves, bulkheads, etc., have stood.

2d. From Louisa to Delery streets the bank is a washing bank, upon which bulkheads properly constructed have stood, except be-

tween Louisa and Desire streets, where bulkheads do stand, but wharves are yearly washed away, and except caves at Lesseps street and in front of the Delavigne brick-yard where the bulkheads do not stand, but are yearly washed away.

LOUIS H. PILIÉ,
Assistant City Surveyor.

Appraisement of Batture.

NEW ORLEANS, *July 25th*, 1881.

After having carefully examined the batture between Notre Dame St., in the first district, and St. Louis street, in the second district, the steamboat landing in front, and Delta and Water streets in the rear, as shown upon a plan made by D. M. Brosnan, city surveyor, dated July 23d, 1881, and having established approximately the measurement of the vacant portion now used for the purposes of commerce by steamboats and other water craft for loading and unloading, I have appraised and estimated the value of the several twelve portions (if they were susceptible of being sold) at the following amounts, inclusive of streets, to wit:

No. 1. Pilie, barge landing, Girod, and Notre Dame	$18,000
No. 2. Girod, Lafayette, Water, and steamboat landing	45,000
No. 3. Lafayette, Poydras, Water, and steamboat landing	45,000
No. 4. Poydras, Gravier, Delta, and projection of Water street	30,000
No. 5. Poydras, Gravier, projection of Water, and steamboat landing	30,000
No. 6. Gravier, Canal, projection of Water and Delta	35,000
No. 7. Gravier, Canal, projection of Water, steamboat landing	45,000
Total amount first district	$248,000

Second district.

No. 8. Canal, Custom-House, depot L. & N. R. R. and steamboat landing	45,000
No. 9. Custom-House, Bienville, sugar shed and steamboat landing	15,000
No. 10. Bienville, Conti, sugar shed and steamboat landing	8,000
No. 11. Conti, St. Louis, sugar shed and steamboat landing	35,000
No. 12. St. Louis and below Clay, and Mississippi river	20,000
Total amount second district	$123,000
First district	$248,000
Second district	123,000
Grand total	$371,000

J. B. WALTON, *Appraiser.*

SURVEYOR'S OFFICE, ROOM NO. 19, CITY HALL,
NEW ORLEANS, *September 12th*, 1881.

To the honorable the mayor and members of the city council:

GENTLEMEN: In obedience to resolution No. 7324, administration series, I have the honor to report that the extent of the port
93 where wharves have been built is from Toledano to Elmira streets, a distance between said points of twenty-five thousand two hundred feet (25,200 feet), from which must be deducted the various privileges granted by the city to agents of steamships and to railroads, etc., as follows, to wit:

	Feet.
1st. Blood or nuisance wharf at Toledano street	50
2d. To New Orleans Elevator and Warehouse Company, from Pleasant to Harmony streets, by ordinance No. 899, new series	275
3d. To Mississippi and Dominion S. S. Company, from below Soraparu to ferry landing at Jackson street, as per ordinance No. —	500
4th. Ferry landing at Jackson street	150
5th. To A. K. Miller & Co., for steamships, from south side of gas-light company's wharf to south side of post No. 29, ordinance No. 7155, administration series	480
6th. To gas-light company, opposite Race street, ordinance No. —	180
7th. Ferry landing at Richard street	150
8th. Nuisance wharf at Robin street	50
9th. To water-works company, for supply pipe, ordinance No. —	120
10th. To T. and G. Forwood & Co. steamships, from Henderson to Terpsichore streets, ordinance No. 7175, administration series	400
11th. To New Orleans Pacific R. R. Co., from Terpsichore to Thalia streets, ordinance No. 6938, administration series	852
12th. To Chicago, St. Louis and New Orleans R. R. Company, from Thalia to Gaiennie streets, ordinance No. 7073, A. S.	782
13th. To Louisville and Nashville R. R. Company, from Gaiennie to St. Joseph streets, ordinance No. 7282, A. S.	552
14th. To Morgan's Louisiana and Texas R. R., from above Notre Dame to below Girod streets, ordinance No. 1492, new series	600
15th. Ferry landing at Canal street	150
16th. To Cromwell Steamship Lines, from St. Louis to Toulouse streets, ordinance No. —	320
17th. To Morgan's Louisiana and Texas R. R., at head of St. Ann street, including ferry landing, ordinance No. 799, new series	300

18th. To Morgan's Louisiana and Texas R. R. and S. S. Company, from Barracks to Marigny streets, ordinance No. 6015, A. S.	925
Amount of wharf privilege given away	6,836
Leaving a balance of wharves not given away	18,365

Very respectfully, &c.,
(Signed) D. M. BROSNAN,
City Surveyor.

The undersigned, Silas Weeks, states that he is a resident of this city and State, engaged in the business of ship agent; that he is well informed as to the facilities given to the shipping of the port; that there has for many years past been a great lack of wharf room for vessels visiting this port; that in consequence thereof they frequently have to lay along and outside of each other two, three, and four abreast; that from this cause great loss of time and inconvenience is incurred, and the cost of handling cargoes is greatly increased; that building continuous wharves along the river bank is grealty needed, and has long been desired by the shipping; that it was one of the principal things demanded by the Maritime Association when the present wharf ordinance was being drawn up; that constructing the said continuous wharves, as required by the ordinance, will largely increase the amount of the wharf room and be of great benefit to the shipping and commerce of the port.

SILAS WEEKS.

94 Sworn to and subscribed before me, at New Orleans, La., this 7th day of November, 1881.

SAMUEL FLOWER,
Notary Public.

Personally came and appeared before me, the undersigned authority, John Crebbin, who, being duly sworn, deposes and says that he is a master builder for Joseph A. Aiken, wharf lessee of the wharves of the city of New Orleans; that for several months past he has been engaged in building, rebuilding, and repairing the wharves for the use and benefit of the ships, steamships, steamboats, and other water craft trading with the port of New Orleans; that he has been engaged in that business for many years, having been in the employ of the former lessees of said wharves, Eager, Ellerman & Co.; that he is well acquainted with the mode and manner of constructing wharves, with the condition thereof in years past and at the present time, and is therefore able to speak knowingly thereof.

Affiant says that the wharves below St. Ann street to the lower limits of the city, where they had been erected, were left in the month of May, 1881, in a wretched and deplorable condition; that before the repairs and rebuilding thereof commenced most of said wharves had either sunken and floated down the Mississippi river or the timber and piling thereof settled in eddies along the bank of the

river, and that there was no foundation to any of said wharves, and the entire superstructure of the third district had to be erected anew; that the few remaining piles which had been sunken into the river bed had to be removed by the aid of steam apparatus, they not affording any foundation for the permanent structure; that a total rebuilding, after having taken away the debris of the former works, has to be carried on and executed by the present wharf lessee, excepting three wharves now partially rebuilt in the said second district; that the present wharf lessee is engaged by the aid of steam apparatus, secured at great cost and of the most improved patterns, with materials the most expensive on account of their quality, are being used in the most systematic and workmanlike manner in the rebuilding of said wharves. The steam pile-drivers are used in planting the piles in the river, the said piles being of a length from fifty-five to seventy-five feet, and they are placed in the bed of said river, those nearest to the shore being driven to a depth of thirty-five feet below the bed of said river and those of the outer tiers being driven to a depth of forty-five to fifty-two feet beneath the bed of said river; that they are driven regularly, uprightly, and then braced with side braces and stringers, and thereon is placed the heaviest of planking, all securely fastened and bolted together in the most thorough manner; that as far as able workmen and expenditure of means to secure perfect work can be had, the wharves of said city now being rebuilt cannot be surpassed.

That in the upper portion of said city of New Orleans, above the French market a better appearance was presented at the time the present wharf lessee took charge of said wharves, but that said appearance was merely upon the surface of the said wharves, excepting a small portion of the steamboat wharves, sinking under weights that are usually placed thereon, the foundation and timbers being decayed and therefore insecure and insufficient, and that to a great extent repairs have been made thereto to enable the commerce at present operating thereon to make use thereof; that during the next succeeding season of low water it will be necessary to rebuild anew almost the entire structures from the French market to the upper limits of the city of New Orleans, especially the ship and steamship wharves; that all of the said wharves of said city built during the time the city of New Orleans had charge thereof, through its own officers, were insecurely, improperly, and insufficiently built, and that the benefits and advantages to water craft by the present system and manner of building will be of the greatest nature, enabling them to load and unload heavy cargoes with great celerity and dispatch, and in a way far more economical than ever before.

95 Under Captain Aiken's contract and by the new wharves built and being built thereunder, the wharf room at this port for all vessels will be almost doubled, thereby increasing the facilities and accommodations to that extent, and same was greatly needed, shipping formerly lying three or four abreast, and the expense has been correspondingly increased. Labor is now twenty to thirty per cent. higher than of late years.

We are using now nearly double the number of laborers used in former years, in my wharf work for Captain Aiken.

JOHN CREBBIN.

Sworn to and subscribed before me, notary, at New Orleans, La., on this second day of November, A. D. 1881.

Witness my hand and seal the day and year aforesaid.

EDGAR GRIMA,
Notary Public.

Personally came and appeared before me, the undersigned authority, William S. Terry, who, being duly sworn, deposes and says that he is a member of the firm of "J. O. Terry & Sons, timber merchants," of this city; that he is under contract with Captain Joseph A. Aiken, of the city of New Orleans, wharf lessee, to supply the piles and timber requisite and necessary for the building and rebuilding of the wharves of the said city; that he is paid by the said Captain Aiken regularly for the timber as furnished by him, and that the call and demand for such timber under the said contract by far exceeds in quantity, order, and delivery, length and solidity any orders ever before received from wharf lessees for the wharves of the port of New Orleans; that timber of the greatest length and thickness that can be procured from the forests are most constantly demanded by said Captain Aiken, and that with the immense resources of his firm for that purpose they are unable with sufficient expedition to furnish the same; that timbers of seventy-five feet in length are in constant demand, they being said to be required to be planted in the bed of the river to a depth of from forty-five to fifty feet to attain sufficient security upon which to rest the superstructure of said wharves.

That affiant has seen the wharves now in course of construction for the use of the vessels arriving and departing from this port, and in no instance during many years of your affiant's and his firm's knowledge and experience in supplying timber to said wharves were such structures ever erected in this city, and that the expense thereof is very great, and such expense is absolutely requisite and proper to afford proper strength and durability to the wharves for the use and benefit of the vessels there so trading; that new wharves have been erected and are in course of erection from the head of the French market to the lower limits of the said city, in the most scientific, systematic, strong, and durable manner, with the best of timber, aided by experienced workmen and steam apparatus and machinery. My father, J. O. Terry, and his former firm have almost exclusively furnished and handled all wharf timber for said wharves for more than fifteen years past.

W. S. TERRY.

Sworn to and subscibed before me, at New Orleans, this 7th of November, 1881.

JAMES FAHEY,
Notary Public.

J. H. Menge, a resident of the city, and one of the wharf lessees, being duly sworn, deposes and says—

That under and by virtue of a contract of the 30th May, 1881, of the city of New Orleans with Joseph A. Aiken, a vast expenditure was necessary and rendered incumbent upon the said lessee to place the wharves of the city of New Orleans in the condition called for by said contract; that the work was done in the most thorough, scientific, and systematic manner, far exceeding in point of durability, strength, and solidity any previous wharves ever heretofore constructed for the benefit of the commerce of the port of New Orleans; that affiant apprehends and so states that by reason of the high waters which have existed during the present inundation, and by reason of the storms which have prevailed, and of the
96 undermining of the wharves by the current of the Mississippi river, it will in all probability be absolutely requisite and necessary that the wharves of the entire front of the city of New Orleans be rebuilt as soon as the water has subsided sufficiently; that affiant apprehends and fears that said wharves will be carried out, by reason of the ground beneath them caving in, into the Mississippi river, and that the labor incurred and the amount of money expended in building said wharves will have to be repeated during the coming stage of low water.

Affiant further says that it is a matter of impossibility to determine what will be the annual expenditures required and absolutely requisite to keep the wharves of the city of New Orleans in proper order and condition; that at no other port of the Mississippi river or its tributaries is the same amount of uncertainty continually arising; that it is absolutely requisite and necessary to bulkhead the levees against which the said wharves are built, in order to preserve a proper support and foundation for said wharves to keep the same steady, and to prevent their being washed away by the waters of the river.

Affiant further says that, although it is true that in said contract it is assumed by said lessee to bulkhead a certain locality in the third district of this city at an expense of $59,000, to be expended in two years, that the same was not so performed by reason of the property owners of the said locality protesting there against to the city of New Orleans and threatening legal measures by way of injunction through the courts and otherwise to prevent said work being done, upon the ground that the amount so to be expended could far better be expended in other and more permanent betterments to said wharves and landings in said locality, and that their intercession to said city of New Orleans, in the interest of the commerce of that portion of said city, prevailed upon the common council of said city to suggest the alteration of said plan of building said bulkhead into the one subsequently adopted by said city of New Orleans and accepted by said wharf lessees; and that under said amendment and modification of said contract the said lessees did expend the sum of $28,394.24, leaving a balance of $855.87 of said sum unexpended, which was held for subsequent improvement at said place and became necessary during the year; and that so far

from said amendment benefiting said lessees or enabling them to realize from said amendment any profit, the same has proved very disadvantageous to them and has entailed upon them a loss for the said bulkhead so directed to be built at said sum of $59,500, — could, by reason of the cash capital of your lessees, have been built for a less sum, and thereon said lessees might have realized some profit.

That the Northeastern Railroad Company having obtained permission from the city of New Orleans to build wharves and to erect depots upon the river front in the third district of this city, affiant says that the same was so given and granted to said corporation in so far as the same operated to dispossess the commerce of this port at said portion of the river front upon the condition that the consent and approbation of the wharf lessees was obtained to said ordinance.

Affiant says that up to the present day no application has been made by said corporation to said lessees and said ordinance has never been attempted to be enforced.

J. H. MENGE.

Sworn to and subscribed before me, at the city of New Orleans, this 4th day of April, 1882.

SAML FLOWER,
Notary Public.

J. H. Menge, being duly sworn, deposes and says—

That complaint is made in complainant's bill of complaint that defendants, Joseph A. Aiken & Co., were obligated by their said contract with said city of New Orleans to place electric lights upon the river front of said city, and that said electric lights have not been so placed, although nearly ten months have elapsed since said contract was entered into.

Affiant says that immediately after the said contract was entered into by said city of New Orleans with said Joseph A. Aiken the enforcement thereof, the rights appertaining thereto, and the obligations assumed thereunder by said Aiken were stayed by
97 process emanating from this honorable court under an application for a writ of injunction and restraining order, which was not dissolved until the latter part of the month of November, 1881, and that thereafter and immediately upon said dissolution of said restraining order, a contract was duly entered into by affiant's firm with the Brush Electric Light and Power Co. of New Orleans for the construction of the necessary electric lights in accordance with the provisions of said contract after said contract had been approved and accepted by said city of New Orleans, and that without such acceptance said electric lights could not be purchased; that your respondents were not compelled within any particular date to furnish said electric lights, but the same were to be furnished immediately upon the request of the city authorities, and that they could not be so furnished prior to the time at which they were furnished, and that said electric lights are now in active operation, and affiant says that the landing upon the portion of the river wharves provided for the benefit of steamboats is furnished with a double row of electric

lights, by reason whereof theft is avoided, danger can be apprehended, property is preserved, the lives and limbs of the owners and employés of steamboats are the better preserved, and the said vessels are thereby enabled to discharge their cargoes and their passengers and to receive on board return cargoes with the same facility at night as they could by day, and thereby lessen their expenditures by the time which otherwise would be used in daylight to accomplish the same purpose.

J. H. MENGE.

Sworn to and subscribed before me, at the city of New Orleans, this 4th day of April, 1882.

SAM'L FLOWER,
Notary Public.

George H. Kirk, a resident of New Orleans, being duly sworn, deposes and says—

That E. M. Vallette, one of the complainants named in the complainants' bill of complaint, has no interest in the subject-matter herein spoken of; that he is not the owner of nor interested in any boat on the Mississippi river or tributaries landing at or departing from the wharves of the city of New Orleans; that he is the owner of a boat called the "Maxie S.," running in the Pearl river trade, but not engaged in trade upon the waters of the Mississippi river.

GEORGE H. KIRK.

Sworn to and subscribed before me, at the city of New Orleans, this 4th day of April, 1882.

SAM'L FLOWER,
Notary Public.

Charles K. Burdeau, a resident of New Orleans, being duly sworn, deposes and says—

That the river front set apart for the use of steamboats from Girod street to St. Louis street is the most valuable portion of the city for commercial purposes.

That the landing at the head of Canal street is the main landing of the city of New Orleans, and it is midway between Girod street on the upper side and St. Louis on the lower side, and that at the head of said Canal street, a ferry landing there located by the city of New Orleans realized to said city by reason of said location the sum of $4,600 per annum, while a few squares below St. Louis street, at the second district ferry landing, the price for said landing obtained by said city of New Orleans, by reason of its being below the business commercial centre, is but $2,640 per annum, although the said ferries transporting passengers and merchandise to the west bank of the Mississippi river land at or near the same landing at that portion of the city upon the opposite bank.

CHARLES K. BURDEAU.

Sworn to and subscribed before me, at the city of New Orleans, on this 4th day of April, 1882.

SAMUEL FLOWER.
Notary Public.

98 Jesse K. Bell, being duly sworn, deposes and says—

That he has been a resident of this city for many years; that he is well acquainted with the commerce of this port, the needs and requisites for a proper landing of steamboats, and the receipt and delivery of cargoes; that the space afforded by the city of New Orleans to the wharves for the benefit of steamboats is larger, more convenient of access, more in the heart of the port, and more conducive to the interests and benefits of the steamboats and those dealing with them, and passengers arriving and departing upon them, than at any other point of the Mississippi river or its tributaries; that he knows the treacherous nature of the current of the Mississippi river, the great annual rise and fall of the river, and the actions of eddies and currents and shifting sands upon the landings in front of said city, and the constant care and watchfulness requisite and necessary to maintain said wharves in proper condition to serve the purposes for which they were erected, and the great and continued expense incurred at all times in rebuilding, repairing, and reconstructing said wharves, and that it is almost impossible to base any estimate upon the amount requisite annually for building and repairing said wharves; that he is aware of the fact that the wharves of said city have been largely increased in their length by reason of the addition of different districts to the city of New Orleans, and is cognizant of the fact that the tonnage arriving at and departing from the port of New Orleans is less now than in former years, and that the rates of wharfage are as low and with better wharves and landings; that he is well aware of the great advantage and convenience afforded to steamboats and their owners by the use of the electric lights upon the river front; that they afford additional security to said boats, enable them to discharge their cargoes at night, and afford a great saving of time; that they are of great convenience to passengers arriving on and departing upon said boats, and that no city should be without said electric lights on the river front, when the same is used for commercial purposes; that a police force to quell disturbances and riots, which so frequently occur among the disorderly class of laborers of nationalities who are employed upon the various vessels arriving at and departing from this port, is absolutely requisite and proper, and their duties as such officers has been, to the knowledge of your affiant, restricted to the river front in the interests and for the benefit of the ships and vessels arriving at the wharves in front of said city.

J. K. BELL.

Sworn to and subscribed before me, at New Orleans, this 4th day of April, 1882.

SAMUEL FLOWER.
Notary Public.

Lloyd T. Belt, being duly sworn, deposes and says—

That he is interested in steamboats running on the Mississippi river and tributaries and coming into the port of New Orleans, owning and controlling the steamers Ashland and J. M. Chambers; that he is well informed as to wharfage charges in various towns and cities on the Mississippi river and the facilities given to boats at the various landings on said river; that he is well aware of the peculiar construction of the wharves at New Orleans, of the vast amount of room available for the delivery of cargo and storage of freight, and the superior conveniences given and granted for mooring and making fast the boats, which frequently come broadside against the wharves, and that by reason thereof they are enabled to receive and discharge their cargoes at New Orleans in much less time than at any other port on the Mississippi river, and at a far less rate of expense; that the amount of wharfage charged against steamboats landing at the wharves of the port of New Orleans of ten cents per ton is a less rate than that of any other port on said Mississippi river, considering the advantages offered, and the extra expenses incurred by steamboats at other ports over and above the amount of wharfage so called actually charged, namely, the expense of storage, of barges, and of wharf-boats, all of which increase the amount actually charged against steamboats to a sum greatly in excess of ten cents per ton.

99 Affiant further states that the wharves and landings assigned to steamboats at the port of New Orleans are the best and most desirable of the whole river front of said city; that no steamboat, to the knowledge of your affiant, would take wharfage room at any other point or space along said river property than at the space now assigned and complained of by the complainants' bill of complaint.

Affiant further says that he is now, and always has been, a strong advocate of a system of lights along the river front, now known and in operation as the "electric light system;" that the same is a perfect success, and that now, as the same has been in active operation for a short period of time, it seems impossible that business could have been carried on heretofore without the aid thereof; that the interest of steamboatmen and their property is greatly enhanced and better secured by reason of said electric lights, and that he would be willing, in order to maintain said system, that an even greater amount of wharfage should be charged to steamboats, for whose use said lights have been erected and are now in practical operation.

LLOYD T. BELT.

Sworn to and subscribed before me, at the city of New Orleans, this 4th day of April, 1882.

SAMUEL FLOWER,
Notary Public.

Edward L. Israel, being duly sworn, says: I have been connected with the steamboat interests of the port of New Orleans for the past twenty-five years, part of the time as clerk, part of the time as master of steamboats, and on the levees as discharging clerk. For the

past eleven years I have discharged continuously one or more of the Vicksburg and Bend packets, and, from my experience and knowledge of the trade, know that it is impossible for these packets to transact their business at any other portion of the levee front of the city of New Orleans and make weekly trips to Vicksburg, because of the lack of necessary space for convenient and rapid handling of their cargoes.

About four years ago I was authorized by Captains Thomas P. Leathers, John W. Cannon, and John W. Tobin, owners of the Vicksburg packets, to try to secure for these packets the exclusive privilege of the wharf and landing at the head of Canal street, the point at which the packets have always and do now land, and to offer in return for this privilege that the Vicksburg packets would, at their own expense, shell and keep in good condition the levee, and keep the wharf in thorough repair, besides making punctual and prompt payment of the wharfage rates—then, as now, ten cents per ton.

E. L. ISRAEL.

Subscribed and sworn to before me November 5th, 1881.

F. A. WOLFLEY,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

William Fagan, administrator of commerce, being sworn, says: I am administrator of commerce of the city of New Orleans, and as such have charge and general superintendence of all matters relating to the wharves and levees of the city of New Orleans, and it is to my own personal knowledge that the sum of ten thousand dollars per annum, paid by the wharf lessee, is at least $2,000 per annum less than the amount necessary to pay the wharfingers, contravention clerks, signal officers, and other employés absolutely necessary for the proper landing of boats and vessels, the proper discharge of their cargoes, and the securing of levee room for the deposit of freight and the transaction of the business of shipping; that the city of New Orleans is at present under an expense of at least $12,000 per annum for these purposes.

WILLIAM FAGAN.

Sworn to and subscribed before me this 7th November, 1881.

J. BENDERNAGEL,
Notary Public.

100 John S. McClure, being duly sworn, deposes and says that he is a photographer in the city of New Orleans, engaged in business at No. 131 Poydras street; that during the month of August, 1881, he was employed by Capt. Joseph A. Aiken, wharf lessee of the wharves of the city of New Orleans, to take his apparatus and repair to the second and third districts of said city, on the river bank, there to make and delineate a true, perfect, and exact representation of the levees, wharves, batture, piling, streets, and buildings adjoining the same at said points; that the various pho-

tographs marked Nos. one to twenty-eight, now exhibited to affiant, with his name endorsed on the back thereof, are true and perfect photographs of the said wharves and landings as they existed on the 20th August, 1881.

JOHN S. McCLURE.

Sworn to and subscribed before me, the undersigned notary public, by John S. McClure, this 7th November, A. D. 1881.

MICHEL V. DEJAN,
Notary Public.

D. C. McCan, being duly sworn, deposes and says that he has been a resident of this city for many years; that he is well acquainted with the commerce of this port, the needs and requisites for a proper landing of steamboats, the receipt and delivery of cargoes; that the space offered by the city of New Orleans to the wharves for the benefit of steamboats is larger, more convenient of access, more in the heart of the port, and more conducive to the interests and benefits of the steamboats and those dealing with them, and passengers arriving and departing upon them, than at any other point on the Mississippi river or its tributaries; that he knows the treacherous nature of the current of the Mississippi river, the great annual rise and fall of the river, and the action of the eddies and currents and the shifting sands upon the landings in front of said city, and the constant care and watchfulness requisite and necessary to maintain said wharves in the proper condition to serve the purposes for which they were erected, and the great and continual expense incurred at all times in rebuilding, repairing, and reconstructing said wharves, and that it is almost impossible to base any estimate upon the amount requisite annually for building and repairing said wharves; that he is aware of the fact that the wharves of said city have been largely increased in their length by reason of the addition of different districts to the city of New Orleans, and is cognizant of the fact that the tonnage arriving at and departing from the port of New Orleans is less now than in former years, and that the rates of wharfage are as low and with better wharves and landings; that he is well aware of the great advantage and convenience afforded to steamboats and their owners from the use of the electric lights upon the river front; that they afford additional security to said boats to enable them to discharge their cargoes at night and afford a great saving of time; that they are of great convenience to passengers arriving on and departing upon said boats, and that no city should be without said electric lights upon its river front when the same is used for commercial purposes; that a police force to quell disturbances and riots which so frequently occur amongst the disorderly class of laborers of all nationalities, who are employed upon the various vessels arriving at and departing from this port, is absolutely requisite and proper, and their duties as such officers has been, to the knowledge of your affiant, restricted to the river front in the interest and for the benefit

of the ships and vessels arriving at the wharves in front of said city.

D. C. McCAN.

Sworn to and subscribed before me, at the city of New Orleans, this 5th day of April, 1882.

SAM'L FLOWER,
Notary Public.

101 John W. Tobin, a resident of New Orleans, being duly sworn, deposes and says that the receipts of the firm of Eager, Ellerman & Co., as wharf lessees for the year 1880, during which their contract was in existence, amounted, according to their sworn reports, to the sum of two hundred and forty-two thousand two hundred and thirty-six $\frac{92}{100}$ (8242,236.92) dollars, and for 1881, reported at $247,000; that the receipts up to date and the probable receipts from said wharves for the year ending the 31st May, 1882, will not reach, by twenty per cent., said sum, and that for the year succeeding it is more than probable that said receipts will be further decreased by ten or twenty per cent. by reason of the following facts:

1st. The disastrous floods which have inundated the Mississippi Valley, including the States of Tennessee, Arkansas, Mississippi, and Louisiana, and have caused a great failure in the crops of the plantations bordering upon the Mississippi river and adjacent thereto, which found a market heretofore in the city of New Orleans and were brought to said city by various steamboats and other water craft navigating said river, and which loaded at the wharves of the city of New Orleans.

2d. That by reason thereof the amount of tonnage required to transport cargoes will be materially decreased and thereby the receipts from wharfage will correspondingly decrease.

3d. That by reason of said failure of crops vessels from foreign ports will seek other markets to obtain cargoes, as they will not be able to obtain the same in sufficient quantities to enable them, to the number and to the extent of tonnage as heretofore, to receive cargoes.

J. W. TOBIN.

Sworn to and subscribed before me, at the city of New Orleans, this 15th day of April, 1882.

SAM'L FLOWER,
Notary Public.

Personally came and appeared before me, the undersigned authority, Louis H. Pilié, who, being duly sworn, says—

That he is a civil engineer, and has been such for over forty-five years, actually engaged in the pursuit of his profession; that from the year 1836 up to the present day he has been officially connected with the city of New Orleans, either as city surveyor or assistant city surveyor, and is thoroughly acquainted with its wharf and levee system; that as assistant city surveyor he drew up all the specifica-

Sworn to and subscribed before me, at the city of New Orleans, this 15th day of April, 1882.

SAMUEL FLOWER,
Notary Public.

Personally came and appeared before me, W. H. McChesney, who, being duly sworn, deposes and says—

That he is now, and has been since the 29th of May, 1881, cashier of the firm of Joseph A. Aiken & Co., wharf lessees of the city of New Orleans; that all the receipts and disbursements are within his personal charge and keeping, and that all entries relative to the same are made by him or under his supervision; that no moneys are received or paid except with his knowledge; that he has duly and carefully prepared a summary of the receipts of the said wharf lessees from the 29th of May, 1881, to the 31st of March, 1882, and he has likewise, from the facts before him, on which he can place entire dependence, made an estimate of the receipts of said wharf lessees, and also of the expenditures for the months of April and May terminating the first year of business of said wharf lessees; that he annexes herewith as part of this his affidavit the said statement, which is true and correct in all respects as aforesaid, and which shows the loss to said lessees for the first year of the business under the said wharf lease of $80,681.83; and further deponent saith not.

W. H. McCHESNEY.

Sworn to and subscribed before me, at the city of New Orleans, this 6th day of April, 1882.

SAM'L FLOWER,
Notary Public.

John J. Brown, being duly sworn, deposes and says—

That he is one of the defendants herein; that subsequent to the adoption of the wharf-lease ordinance and the contract made thereunder your affiant applied to the city council for information and directions concerning the erection of the necessary apparatus and paraphernalia wherewith and whereby the wharves and landings of the city of New Orleans should be lighted with the electric light; that the city council of the city of New Orleans were in doubt as to which system of lights would be the most beneficial, inasmuch as at that time no experiments thereof had been made in the city of New Orleans; that, well knowing the fact that various patents had been issued for electric lights, and that the same were in active operation in the larger cities of the North and the West, your affiant, in the interest of the said wharf lessees and for the purpose of obtaining the requisite and necessary information, at heavy expense, visited various cities in the North and in the West, and observed the practical workings of the different systems of electric lights in Chicago, New York and several other cities, and after making an exhaustive and careful examination of several weeks of said different systems of lights, returned to the city of New Orleans with the necessary information, doc-

uments, and estimates from the different patentees and companies concerning said lights and the power and value thereof; that upon his return to the city of New Orleans, a restraining order having been issued by this honorable court preventing the said electric lights from being put into operation, affiant applied to the city of New Orleans for information relative thereto and directions concerning the same, and was by the city council directed to cease any operations until the matter before the court had been determined;
104 that immediately after the said restraining order had been dissolved by virtue of an order of this honorable court, upon consultation with the city council, a contract was entered into with the Brush Electric Light and Power Company, that patent being adopted by said city of New Orleans as being the most conducive to the interest of all concerned, and that immediate steps were taken by said Brush Electric Light and Power Company to furnish the plant and put up the lights for the sum of $40,000, and to do so in the shortest possible time; the said contract with said Brush Electric Light and Power Company is attached herewith and marked Exhibit A.

Affiant further says that, notwithstanding the fact that the said electric lights were not in active operation until the 1st of April, 1882, still your affiant's said firm did during that period of time, from the 29th May, 1881, to the 31st March, 1882, pay for in full all of the lights requisite and necessary to light the city of New Orleans, as will more fully appear by reference to the accounts of said city of New Orleans, to which reference is made for greater certainty

JNO. J. BROWN.

Sworn to and subscribed before me, at New Orleans, La., this 6th day of April, 1882.

SAMUEL FLOWER,
Notary Public.

Cash Statement of Jos. A. Aiken & Co., Receipts and Expenditures, May 29th, 1881, to 31st, 1882.

Disbursements:

Cash expenditures for lumber, labor, materials, etc., from May 29th, 1881, to March 31st, 1882	$222,628 19
Owe on open account, to be paid before May 29th, 1882, viz., on open accounts due	7,500 00
Due city of New Orleans for police, April and May	6,666 66
Brush electric light	34,400 00
Estimated running expense of electric light, April and May	3,000 00
Work to be done, repairs, etc., April and May, estimated labor, materials, for same	$7,200 00
	$281,374 85

Receipts:

Cash receipts from wharfage collections, etc., from May 31st, 1881, to March 31st, 1882	171,193 02
Estimated receipts for April and May, 1882	29,500 00
Loss (estimated)	$80,861 83
	$281,374 85

W. H. McCHESNEY, *Cashier.*

Personally came and appeared before me, the undersigned authority, Marcus J. Zuntz, who, being duly sworn, says that he is the owner of the Atlantic cotton press, which is situated on the levee front, between Clouet and Montegut streets, in the third district.

Affiant says that in 1881, just after the adjudication of the wharf contract to the present lessees, he, together with many owners of property in the third district, seeing that a faithful carrying out of the plans and specifications provided for in the 13th section of ordinance No. 7079, A. S., would necessarily result disastrously to them and carry away a large portion of the street into the river, presented a petition to the council protesting against the carrying out of the said 13th section of the contract. The said petition was signed and ordinance No. 7304, A. S., passed directing the wharf lessees to proceed to build the bulkhead as provided for in the 13 section of ordinance 7079; that in pursuance thereof the said lessees were proceeding to the construction of the said bulkhead, and had actually begun to work, when affiant protested against said action and notified the said lessees that he would enjoin further action on his
105 part looking to the carrying out of the said 13th section; that affiant then proceeded to the city hall and protested there to the surveyor and administrator of improvements that the carrying out of the plan provided for in the said 13th section necessitated the driving of piles in the centre of the street immediately in front of the cotton-press, and that, as has been the case in the past, when the high water subsided, the wharves would cave and carry with them into the river that half of the street between the piles and the river; that another plan should be adopted which would furnish a permanent and solid foundation to which the wharves could be attached and the annual destruction of wharves prevented; that thereupon, and in consequence of the determined opposition of affiant, the wharf contract was amended and changed, as provided for in the amendatory contract of October 3rd, 1881; that said change was in nowise made at the solicitation or request of Captain Aiken, wharf lessee.

Affiant further says that in his interview with Captain Aiken, wharf lessee, the said lessee expressed himself as entirely indifferent as to the manner in which he was called upon to make the disbursements required by the 13th section, whether upon the piled bulkhead, or otherwise, and so expressed himself to the administrator of improvements in the presence of affiant.

Affiant further says that he has been in charge of the Atlantic press and daily and constantly in that portion of the third district

during fifteen years, and that it is to his knowledge, derived from his experience, that no wharf can be built upon the Mississippi river unless furnished with a bulkhead to which said wharf can be attached.

Affiant further says that throughout his experience in this city and his knowledge of the wharves and landings of the third district, which his personal interest led him to examine and observe, he has never known of any work being done which could in any manner compare with the work done by present lessees; that the work done by them is in every respect thorough and far beyond the requirements of their contract; that the facilities afforded to shipping have been largely and materially increased, and the character and class of wharves is far superior to the wharves heretofore in use.

Affiant further says that his experience in the past has been that the wharves in the third district had to be annually reconstructed.

Affiant further says that the high water now prevailing will surely result disastrously to the wharves and entail heavy expense upon the lessee; that such was the result of the high water of 1874, and the extent of the damage cannot possibly be estimated beyond the knowledge that it will be extensive.

Affiant further says that the levee in the third district is the landing, and that the said levee must be kept up for the purposes of the wharves, which otherwise could not exist.

M. J. ZUNTS.

Sworn to and subscribed before me, notary, at New Orleans, La., this April 6th, A. D. 1882.

ANDREW HERO, JR.,
Notary Public.

Richard Sinnott, being duly sworn, deposes and says that he is interested in steamboats running on the Mississippi river and tributaries, and coming into the port of New Orleans; that he is well informed as to the wharfage charges in various towns and cities on the Mississippi river, and the facilities given to boats at the various landings on said river; that he is well aware of the peculiar construction of the wharves at New Orleans, of the vast amount of room available for the delivery of cargoes and storage of freight, and the superior conveniences given and granted for mooring and making fast to the boats which frequently come broadside against the wharves, and that by reason thereof they are enabled to receive and to discharge their cargoes at New Orleans in much less time than at any other port on the Mississippi river and at a far less rate of expense. The amount of wharfage charged against steamboats loading at the wharves of the port of New Orleans of ten per
106 cent. per ton is a less rate than that of any other port on said Mississippi river, considering the advantages offered and the extra expense incurred by steamboats at other ports, over and above the amount of wharfage, so called, actually charged, namely, the expense of storage, of barges, and of wharf-boats, all of which increase

the amount actually charged against steamboats to a sum greatly in excess of ten cents per ton.

Affiant further says that the wharves and landings assigned to steamboats at the port of New Orleans are the best and most desirable of the whole river front of said city, and that no steamboat, to the knowledge of your affiant, would take wharfage room at any other point or space along said river property than at the space now assigned.

Affiant further says that he is now, and always has been, a strong advocate of a system of lights along the river front now known and in operation as the "electrict light system."

That the same is a perfect success, and that now that the same has been in active operation for a short period of time it seems impossible that business could have been carried on heretofore without the aid thereof; that the interest of steamboatmen and of their property is greatly enhanced and better secured by reason of said electric lights, and that he would be willing, in order to maintain said system, that an even greater amount of wharfage should be charged to steamboats, for whose use said lights have been erected and are now in practical operation.

R. SINNOTT.

Sworn and subscribed before the undersigned, a duly commissioned and qualified notary public in and for the parish of Orleans, State of Louisiana, at New Orleans, this April 6th, 1882, as witness my hand and seal.

ANDREW HERO, JR.,
Notary Public.

Personally came and appeared before me, the undersigned authority, George O'Connor, who, being duly sworn, deposes and says—

That he is in the employment of the Southwestern Brush Electric Light Co. of New Orleans, a corporation duly organized under the laws of this State.

That said electric light Co., on the 14th of December, 1881, entered into a contract with the firm of Joseph A. Aiken & Co., of this city, a copy of which is now on file in this cause, to prepare, erect, and operate electric lights on the river front for lighting the levees and wharves of the city of New Orleans.

That since said contract was made affiant, on behalf of said electric light Co., used every effort that ample means and a large force of men would warrant to expedite the work under said contract; that the same was put into active operation in a less space of time than has been done heretofore under any contract of similar magnitude or approximating the same in the United States; that no delay whatsoever occurred in relation to said work, and the same is now in full and active operation.

GEORGE O'CONNOR.

Sworn to and subscribed before me, a duly commissioned and qualified notary public in and for the parish of Orleans, State of

Louisiana, at New Orleans, this 6th day of April, as witness my hand and seal.

ANDREW HERO, JR.,
Notary Public.

Personally came and appeared before me Jerry Donovan, who, being duly sworn, says that he is a sergeant of the Crescent City police and is in charge of the harbor precinct, and has been in command thereof since May 26th, 1880; that at the time he took charge and up to the adjudication of the wharf contract to the present wharf lessees there were but ten patrolmen in charge of the harbor
107 precinct, and that said force was totally inadequate to quell the disturbances and strikes which frequently took place upon the levee; that the precinct extended only from Felicity road in the first to Esplanade street in the second district, and that at night there were but three men and an acting corporal in charge of that whole space, and by reason of the inadequacy of such force to patrol so large a space much pilfering and thieving of the produce and freights lying upon the levee took place, and reports were frequently made from some of the steamboats of thieving and pilfering in the night time.

That during the course of the year 1880 strikes and disturbances amongst the steamboat labor upon the levee were of frequent occurrence, and the steamboats were frequently obliged to call upon the harbor police force for assistance, and that on such occasions, because of the force being so small, it had to be called away from all other portions of the river front and concentrated at the points of disturbance and had to be reinforced by some eight or ten men of Farrell's protection patrol, who reported to and were placed under control of affiant, and that even then the force, proving inadequate, had to be reinforced by details from the general police force.

Affiant further says that since the adjudication of the contract to the present wharf lessees there are forty patrolmen, one sergeant, three corporals, two clerks and operators, and two porters on the harbor force, and that the harbor force now patrols that whole portion of the levee front which is devoted to shipping; that in consequence thereof the harbor precinct is much quieter and more orderly and complaints much less frequent.

Affiant further says that the electric light will prove of the greatest benefit in aiding the police force in guarding the cotton, sugar, produce, and freight upon the levee, and especially to enable the harbor police to watch the river and guard against river thieves.

The harbor police force are paid promptly monthly out of the funds paid to the city by the wharf lessees, whereas formerly their pay was irregular and frequently months in arrears.

J. J. DONOVAN,
Sergeant and Commanding Harbor Precinct.

Sworn to and subscribed before me, at the city of New Orleans, this 6th day of April, 1882.

SAMUEL FLOWER,
Notary Public.

Personally came and appeared before me, the undersigned authority, A. P. Harrison, who, being duly sworn, says—

That he is the chief clerk of the department of finance of the city of New Orleans, and, as such, has charge of the cash ledgers of the said city and the management and supervision of its bank accounts.

Affiant says that the wharf lessees, Joseph A. Aiken & Co., have paid into the city of New Orleans monthly since the date of their contract their sum of $3,333.33, as provided for in the contract; that the said monthly payments when received are not retained in the general fund of the city, but are deposited in the bank to the credit of a special account denominated "wharves and landings," and used exclusively for the purposes of the said "wharves and landings, payment of harbor police, contravention clerks, wharfages, etc."

A. P. HARRISON.

Sworn to and subscribed before me, at the city of New Orleans, this 8th day of April, 1882.

SAM'L FLOWER,
Notary Public.

108 Captain RICHARD SINNOTT, being duly sworn, deposes and says:

By Mr. BENEDICT:

Q. Captain, you have been engaged in steamboating on the Mississippi river for any length of time?

A. I have been steamboating for about twenty-five years as a man and boy.

Q. During that time what portion was devoted to steamboating connected with the port of New Orleans?

A. I suppose about twenty years.

Q. Prior to the adoption and erection of the electric lights at this port how were the steamboat wharves lighted?

A. They were not lighted at all; not more than gas lamps.

Q. Did those lamps perform the service for which they were intended—throwing light over the goods and over the vessels?

A. No, sir; not in comparison with the electric light.

Q. Have you noticed particulary the working of the electric light since it has been in operation?

A. Yes, sir; I have noticed it very particularly when I come into port at night.

Q. Is it a benefit or detriment to your boat?

A. It is an immense advantage.

Q. In what way?

A. In every way.

Q. In regard to the safety of freights from your boats loaded on the wharves since the electric lights have been in operation, what effect has there been?

A. Great advantage in taking care of our cargoes lying on the wharves; now, with the electric lights, we can look from our decks very easily; if you have a watchman you can see if he is attending to his duty, and the light facilitates him a great deal.

Q. It has been stated that those electric were to a certain extent—or as one witness for plaintiff expressed it, "it blinded his eyes in trying to make a landing at this port?"

A. Then he ought to quit steamboating.

Q. Do you know whether or not the erection of the electric lights has assisted the boats in making landings?

A. Yes, sir, and all that have the money have got them on their boats. I would have it myself, but I am too poor; if I had the money I would have it mighty quick.

Cross-examination by Judge KENNARD:

Q. Do the electric lights on the levee dispense boats from the use of their own lights?

A. Well, I never have to use any; there is no necessity for me to use any; I can make landings with those lights very nicely without any danger at all.

Q. You speak only with reference to your own boat?

A. Yes, sir; that is all that I can speak of.

Q. What boat is it that you command?

A. The Jesse K. Bell.

LLOYD T. BELT, Esq., sworn on behalf of defendants, says:

By Mr. BENEDICT:

Q. Captain Belt, how long have you been steamboating in connection with the port of New Orleans?

A. I commenced steamboating here in 1846.

Q. Prior to the adoption of the electric light here what provision had been made either by the city of New Orleans [or] the lessees of the wharves for lighting the same?

A. There was no provision made, I believe, sir.

Q. Was there any kind of light afforded to the boats or their cargoes?

A. Only our own lights that I know of.

Q. What boats have you controlled, managed, ran, or owned?

A. Well, I have commanded a great many boats in the New Orleans trade. I was two years with the Atlantic and Mississippi Steamship Company, and ran the Olive Branch, Lady Gray, City of Memphis, and other boats.

Q. Lately what boats have you had?

A. For the last three or four years I have not commanded any boats regularly myself. I have two boats here at present, the Chambers and the Key West.

Q. To what ports do those boats run?

A. To Bayou Teche.

Q. Have you examined the manner in which boats are now landed and the way in which they discharge their cargoes and the manner in which those cargoes are cared for since the electric lights have been in operation on the levee?

A. Yes, sir.

109 Q. From your observation and knowledge so obtained what do you say in relation to the system of electric lights now in operation there?

A. Well, sir, I think that they are a very great advantage in handling freights, on the levee; not only in handling freights, but taking care of it after it is out; watching it.

Q. Can you in any manner from your boat while landed at the wharf see your freights lying on the levee and see that your watchmen are attending to their duties?

A. I never keep a watchman on the levee at night. I have hardly ever made a trip from here without having up freights on the wharf, and I never have any watchmen.

Q. Did you formerly have watchman?

A. Yes, sir; I always did before the electric light. I never have a watchman unless my freight is very much scattered.

Q. Since this system of lights has been adopted has it been a convenience or detriment to the commerce of the port?

A. I think that it is the greatest convenience in the world.

Q. Would you be willing to be deprived of it?

A. No, sir; I would not.

Q. You have run the port of St. Louis, captain, have you not?

A. Yes, sir; I have steamboated there. I have steamboated above there—way above St. Louis. I commenced steamboating in 1846. I have steamboated off and on ever since, and have done a great deal of it above St. Louis; that's my home.

Q. Therefore you must certainly know the accommodations at St. Louis for steamboats in the way of wharf-boats and other conveniences as compared to the steamboat wharves at New Orleans, do you not?

A. Yes, sir; I believe I owned the first wharf-boat that was ever in St. Louis.

Q. Suppose you take the Natchez coming down with five thousand bales and landing at the steamboat wharf at New Orleans—it has been testified that she could unload that cargo in a very short time—say, a few hours. What length of time would it take to discharge such a cargo with the facilities and conveniences of every nature and kind that the port of St. Louis affords?

A. Well, sir; that kind of freight I don't believe that you could put five thousand bales on the levee in St. Louis at all; it is seldom that you could find room to put it all.

Q. Grant that you would fill up the wharf-boat at which you would land in St. Louis, what assistance would be required to load or truck it in, to get it to the proper place—to get it up to the incline levee at St. Louis.

A. Well, the wharf-boat stages are sixty or seventy-five feet long; they run up on the wharf; it is pretty steep trucking; that is the reason why I say that I hardly think you could truck cotton on that wharf at all.

Q. It is small block stone?

A. Yes, sir; it is a pretty steep wharf when the river is at a low stage, and when the water is high there is no room.

Q. Grant such a cargo as I have stated, five thousand bales, how much of that could one of the wharf-boats take in one day?

A. Since they have got the large wharf-boats there—I think that it is the Vicksburg Anchor Line—I think that it is the Vicksburg Anchor Line—I think that they have got the largest wharf-boat in the country. I don't believe that you could put cotton on there and separate it so as to keep the marks different. I don't believe that you could put two thousand bales on there—that is, I mean so as to give room for more; you could probably put three three thousand bales on the wharf.

Q. Then, to get rid of the balance on that boat, what would this boat have to do?

A. To truck it ashore.

Q. What length of time would it take to unload the balance of that cargo?

A. It would be a big job in St. Louis; it would not be impossible, but it would be a big job to do in St. Louis.

Q. Would it be very expensive?

A. It would indeed. As I say, the levee is pretty steep, and it would take about four men to truck a bale of cotton up there.

Q. At St. Louis is there a wharfage paid to the city?

A. Yes, sir; there is.

Q. Is there any additional wharfage required or necessary for steamboats to pay?

A. They always pay the wharf-boats.

110 Q. All the steamboats land at the wharf-boats?

A. Yes, sir; there is no law prohibiting their loading, and I believe that they are allowed to charge a reasonable compensation for the use of the wharf-boats; they are private boats belonging to different companies, but boats load at them.

Q. Do you know if any repairs are required at St. Louis to the wharves that they have?

A. You mean to the wharf itself?

Q. Yes, sir.

A. Well, of late years they occasionally get a hole, but there is very little to be done there.

Q. Are they great or comparatively light?

A. They are apparently insignificant; I know that there is seldom any repairs made on the wharf.

Q. Is the bank in front of the city a caving bank?

A. It is rock; it is all built on solid rock; the wharves in many places lay right in the rock; many portions of the wharves are of solid rock themselves; at one time it was a solid bluff, but it has been all graded down and a pavement made on it.

Q. Do you know of large steamboats that as a general rule use the electric lights in making their landings as they make their voyages?

A. Yes, sir; I believe that most of the large boats have them now.

Q. Do you know whether the electric light is any impediment in the discharging or loading of boats?

A. I have heard of its being used; I have not got it on my boats because I have not been able to afford it; I see them using it frequently; I have no doubt that it is a very great advantage.

Q. How did you find the condition of the wharves in the city in the last year?

A. In New Orleans, you mean, sir?

Q. Yes, sir.

A. I think that the wharves have been in as good condition as I have ever seen them—in fact, I think a little better.

By Mr. DENEGRE:

Q. Do you know the carrying capacity of the "White," or the Natchez or the Richardson?

A. Well, no, sir; I don't know except what I see of the manifests that they bring in.

Q. Well, as compared with other boats on the river?

A. They are the largest carriers here.

Q. How many trips a month do they make?

A. A trip a week.

Q. Suppose the facilities that they have to discharge in this port were such as they have in St. Louis, how many trips a month do you think that they would make?

A. You mean if the wharves in St. Louis were the same as they are here?

Q. Yes, sir.

A. I think that they might make one trip a month.

Q. Were you ever connected with the wharf-boats in St. Louis?

A. Yes, sir, I was at one time; I was superintendent of a line to do with the wharf-boats for several years; we had eight or ten steamboats, probably eleven, the line that I was with, and we charged the boats ($100) one hundred dollars a month—that is, for wharf-boat charges alone.

Q. How many trips a month?

A. Some make a trip a week and some two trips a week. I charged the boats up with about money enough to cover all the wharf-boat expenses and repairs; I think it was one hundred dollars a month that I charged them—a price just enough to pay the expenses of the wharf-boats, but the large wharf-boats that have been there since I have not had anything to do with them, and I don't know what they will charge.

Cross-examination by Mr. KENNARD:

Q. I understand you say, Captain, that most of the business in discharging and receiving at St. Louis was done on the wharf-boats?

A. The receiving is done on the wharf-boats, but the discharging is put on the shore, except the small lots what they can put on wagons; the outgoing freight is all received in the wharf-boats, as a rule.

Q. Do I understand you to say that the rule is that the freight is not put out on the wharf-boats?

A. They have not got room to put it on the wharf-boats;
111 I think that the Anchor Line have four stages on the wharf-boat; you see they have to have room enough on the wharf-boat for the wagons to turn; they cannot put it all on the wharf-boat.

Q. But my question is whether or not freight going to St. Louis is put on the wharf-boat or on the shore?

A. It is put on the shore.

Q. I understood you to say that you are not at all certain about the wharfage being seven cents a ton?

A. No, sir; there was an ordinance passed during the last few years and I have not had steamboats running above to St. Louis during the last four or five years.

Q. Some boats pay wharfage and some do not?

A. Some pay their wharfage in the way of licenses to the city. I am not exactly familiar with that, but I know that some boats are assessed there in the city as "home" boats and pay in the shape of taxes, but the transient boats I think pay seven cents a ton. That was the wharfage when I had the wharf-boat there, and I don't think that it has since been changed.

Q. How long since you had a wharf-boat there?

A. Eight years.

Q. Was that the charge that you made then?

A. Yes, sir; and I don't think that it has been changed since; the ($100) one hundred dollars was the wharf-boat's charges; that was to defray the expenses of taking charge of the wharf-boat.

Q. And you paid seven cents a ton besides that?

A. Yes, sir.

Q. You don't know anything about the present rate of charges in St. Louis?

A. No, sir; I could not state anything positive about that?

By Mr. DENEGRE:

Q. What was the tonnage of these packets that you had control of?

A. That I have now?

Q. No, sir; that you had control of then in St. Louis?

A. Well, we had boats custom-house measure, that would measure from two hundred and fifty to four hundred tons; some of our boats were side-wheel boats.

Q. And what was the average tonnage of the boats there?

A. Well, I think that our boats would average between three hundred and fifty and three hundred tons. I speak of custom-house measurement; some of them were smaller and some were larger; from memory I don't know.

Q. When were you last in St. Louis with a boat of your own?

A. I left there in October last with a boat of my own.

Q. What was the name of that boat?

A. The Key West.

Q. Did you load at any wharf there with the Key West?

A. Yes, sir; I loaded at the Northern line wharf-boat.

Q. What is the tonnage of the Key West?

A. I think that it is two hundred and forty-odd tons.

Q. What was the charge that you paid to the wharf-boat?

A. I paid the wharf-boat fifty dollars. I only laid there one day.

Q. What did you pay to the city?

A. Now, I don't recollect. I think, as I stated before, that it was at the rate of seven cents a ton, but I would not state that positively, I can easily tell by looking at the books, but I did not charge my mind with that exactly.

By Mr. KENNARD:

Q. I understand you to say that you don't know to a certainty at all what was the actual wharfage you paid for the Key West at that time?

A. No, sir; I don't recollect, as I stated before; it is my impression that it was seven cents a ton.

By Mr. BENEDICT: I offer in evidence statement showing tonnage of the steamers H. Hanna Blanks, John H. Hanna, and F. A. Blanks to show upon what they are charged and what they paid for wharfage from the time that this contract went into effect until the time that you brought your action in the year 1882.

By Mr. KENNARD: I reserve an objection on account of its irrelevancy.

(Document annexed and marked "A.")

By Mr. BENEDICT: Also statement showing the tonnage of the steamers Alvin, Martha, Isabel, Daisey, Assumption, and Belle of the Coast.

(Document annexed and marked "B.")

By Mr. KENNARD: I reserve the same objection to this document.

112 By Mr. BENEDICT: I also offer communication from the mayor's office to the wharf lessees, accepting the Brush electriet light as the patent under which the work was to be done under their contract.

(Document annexed and marked "C.")

By Mr. KENNARD: I reserve the same objection.

And the examination closed here.

DOCUMENT "A."

Wharfage Paid by Steamers Fred. A. Blanks, John H. Hanna, H. Hanna Blanks, and Earle [from] May 29th, 1881, to April 7th, 1882.

1881.					
August	5.	Str. Earle	161 tons	16	10
"	13.	"		16	10
June	24.	"		16	10
July	1.	"		16	10
"	8.	"		16	10
"	15.	"		16	10
"	23.	"		16	10
"	29.	"		16	10
June	17.	"		16	10
August	19.	"		16	10
"	27.	"		16	10
September	3.	"		16	10
"	10.	"		16	10
"	17.	"		16	10
"	23.	"		16	10
October	24.	"		16	10
November	1.	"		16	10
"	9.	"		16	10
"	25.	"		16	10
December	13.	"		16	10
1882.					
January	23.	"		16	10
1881.					
December	1.	"	Two lay days	10	00
				348	10
1881.					
May	31.	Str. Jno. H. Hanna	377 tons	37	70
June	7.	" "		37	70
1882.					
February	1.	" "		37	70
"	8.	" "		37	70
"	16.	" "		37	70
March	8.	" "		37	70
"	15.	" "		37	70
"	22.	" "		37	70
"	28.	" "		37	70
April	5.	" "		37	70
				377	00

113

1881.						
August	9.	Str. Fred. A.	Blanks	810 tons		81 00
"	26.	"	"			81 00
1882.						
January	11.	"	"			81 00
"	18.	"	"			81 00
"	24.	"	"			81 00
February	21.	"	"			81 00
March	4.	"	"			81 00
January	5.	"	"	Three lay days		15 00
						582 00
1881.						
June	2.	Str. H. Hanna	Blanks	258 tons		25 80
"	9.	"	"			25 80
"	14.	"	"			25 80
"	20.	"	"			25 80
"	28.	"	"			25 80
July	5.	"	"			25 80
"	12.	"	"			25 80
"	18.	"	"			25 80
"	26.	"	"			25 80
August	2.	"	"			25 80
"	9.	"	"			25 80
"	16.	"	"			25 80
"	23.	"	"			25 80
"	31.	"	"			25 80
September	26.	"	"			25 80
October	3.	"	"			25 80
"	10.	"	"			25 80
"	17.	"	"			25 80
"	25.	"	"			25 80
November	1.	"	"			25 80
"	9.	"	"			25 80
"	24.	"	"			25 80
December	10.	"	"			25 80
"	26.	"	"			25 80
1882.						
January	11.	"	"			25 80
"	17.	"	"			25 80
March	14.	"	"			25 80
"	30.	"	"			25 80
1881.						
December	3.	"	"	Five lay days		25 00
						747 40

Recapitulation.

Str. H. Hanna Blanks, 28 trips	747 40
Str. Fred. A. Blanks, 7 trips	582 00
Str. Jno. H. Hanna, 10 trips	377 00
Str. Earle, 21 trips	248 10
Total amount collected	$2,054 50

W. H. McCHESNEY, *Cashier.*
JOS. A. AIKEN & CO.,
Wharf Lessees.

114 DOCUMENT "B."

Tonnage of Steamers Alvin, Martha, and Daisy.

	Total tons.
Str. Alvin, 202 tons Str. Martha, 102 tons Str. Isabel, 137 tons Str. Daisy, 24 tons	465
Str. Assumption, 238 tons Str. Belle of the Coast 361 tons	590

DOCUMENT "C."

NEW ORLEANS, *December* 7, 1881.

Jos. A. Aiken & Co.

GENTLEMEN: I have been directed by his honor the mayor to notify you that the "Brush Electric Light" for lighting the wharves and levees, under section 14 of the wharf ordinance, is satisfactory to the council.

By order of the mayor:

E. L. BOWER,
Chief Clerk.

Testimony Taken on Behalf of the Defendants, by Consent, at the Office of George Denégre, Esq.

NEW ORLEANS, *March* 12, 1883.

Present: George Denégre and W. S. Benedict, Esqrs., solicitors for defendants; Kennard, Howe & Prentiss, Esqrs., solicitors for complainants.

JAMES POWELL, a witness sworn and examined for defendants, says:

By Mr. DENÉGRE:

[Q.] What is your occupation?

A. I have been mating on the river for a long time.

Q. What is your present occupation?

A. Watching on the levee. I have been at it off and on for twenty-five years, or thirty, and for the last nine years I have been with Captain Sinnott.

Q. How long have you been connected with the steamboat trade in this city?

A. Since I was a boy—since 1837, when I commenced at it.

Q. Are you familiar with the requirements of steamboats that enter this port, so far as the facilities of wharfage are concerned?

A. Yes, sir; as much as anybody you can find.

Q. You say you are watching at present?

A. Yes, sir; watching freight on the levee for steamboats.

Q. What steamboats are you watching for?

A. The Anchor Line, and also the Cincinnati boats; the Mary Houston and the Charles Morgan, etc.

Q. Were you watching on the levee previous to the erection of the electric lights?

A. Yes, sir; and before the gas lights were put up.

Q. Did you find the gas lights to be a benefit?

A. The gas lights were a benefit when they were first put up.

Q. What has been your experience with the electric lights?

A. They have ruined me in my work. In the first place the freight is put off one of these great big steamboats and make a large square of freight, and instead of having two or three watchmen to watch it as they used, they do not now do it; they have only one.

Q. That is because of the electric lights?

A. Yes, sir; a man can sit on the boiler decks and see all over.

115 Q. How many watchmen were required by the Anchor Line prior to the erection of these electric lights?

A. Two.

Q. And how many of them now?

A. Only one; I do it myself.

Q. Do you watch for any boats at the same time that you watch for the Anchor Line boats?

A. No, sir.

Q. What are the boats of the Anchor Line?

A. There is the City of Baton Rouge, the City of New Orleans, the Annie P. Silver, and two or three others running in the Anchor Line, for their freight accumulates at St. Louis; the Powell was the last one.

Q. To what line does the City of New Orleans belong?

A. The Anchor Line.

Q. And the Halliday?

A. Yes, sir.

Q. Who is captain of the City of New Orleans?

A. Captain Carter.

Q. Is it necessary for you to have a light on the levee to watch the freight property?

A. Yes, sir, very much so. I could not do it without lights; we are in danger of our lives without them, or anybody that passes through there.

Q. Do you know whether the presence of the electric lights have been of any advantage to the boats with regard to saving them from loss of freight?

A. Yes, sir, a great advantage; and a great advantage, I think, to people in town; I know it, in fact, because the boats used to come in at night burning these torches while taking freight off and making sparks, and having hay, cotton and a great deal of combustibles on the levee. I thought there was more fire than there should be.

Q. Before the electric lights were erected, do you know whether or not there were any complaints made with regard to the loss of freight by thieving?

A. Yes, sir; at one time for a couple of years it took all I could make to pay for lost freight to one man I work for now, Joe Pepin. And Mr. Langwell, about town, I paid him many a dollar for freight lost by thieving. I remember I had three men on the James Howard as watchmen on her freight and the thieves had opened a cask and taken the stuff out.

Q. What has been your experience since the erection of the electric lights?

A. I have not lost a thing since the electric lights were put up.

Cross-examined by Mr. KENNARD:

Q. What did I understand you to say your business was?

A. My business is watching freight on the levee for the Anchor Line boats.

Q. I understood you to say that the electric light not only benefits the shipping, but the town?

A. Yes, sir; it does not benefit me any, because I lose my work by it, but still it is a benefit to me to know that I do not lose anything.

Q. Who pays you for watching?

A. The discharging clerk pays me now, but formerly it was the boats, but now they take the boats at so much.

Q. Who pays the discharging clerk?

A. The boats do.

Q. The pay comes out of the boats?

A. Yes, sir.

Q. You are not paid by the city at all?

A. No, sir.

Re-examined by Mr. DENÉGRE:

Q. How long were you a mate?

A. I have been mating on the river now altogether for eighteen or twenty years. The first steamboat that I was ever head mate of was the Eclipse, and I was with Captain Kirke before the war on the steamer Messenger.

Q. There are police on the levee employed by the city?

A. Yes, sir; but there is only one policeman from there to the elevator on some nights.

Q. In relation to the electric lights, which you say is of service to the city generally, you refer to the ease with which people can go from the city to the boats, and from the boats to the city at night?

A. Yes, sir; they light their way. Before that, when you got on

the sidewalks, you could not tell what gangways you were taking. It has been so on the levee many a time, and the men are distributed.

116 Q. Is it not often the case that the boats arrive at night and discharge passengers that desire to go to the hotels or their homes?

A. Yes, sir; very often.

Q. Do you not know that the electric lights are of service to these people?

A. Yes, sir; a great deal of service. I can sit at the foot of Gravier street and watch the freight up to Poydras street.

By Mr. KENNARD: There is not so much necessity for police now as there used to be?

A. No, sir; I do not see any necessity now; there is no trouble. There is only one man from there up to Thalia street, and from there to the elevator. I have not seen him since the time I took my work last, a little over two months. I did not see him over twice a night, and sometimes not that.

By Mr. BENEDICT:

Q. During the day you do not attend to watching?

A. No, sir.

Q. The ordinary police are there?

A. Yes, sir.

EDWARD L. ISRAEL, a witness sworn and examined for defendants, says:

By Mr. DENÉGRE:

Q. What is your occupation?

A. I have been discharging clerk for the last fifteen years, and a steamboat captain. I discharge the Vicksburg boats, the Natchez, Lee, White, and Richardson.

[Q.] What boats are you discharging at present?

A. I am not discharging any myself personally, but the White and Richardson, and the Ouachita packets were my boats. I employ men to do the work now.

Q. You are employed by the boats to do the discharging?

A. Yes, sir.

Q. Of what advantage is it to you to have a long stretch of levee to discharge these boats?

A. Well, it is a very great benefit.

Q. In what way?

A. Well, in time, economy, handling the freight, and delivering it promptly; getting rid of it, and lessening the cost.

Q. When cotton is discharged from one of your packets, how is it placed on the levee?

A. In different lots; each different consignee's pile is put separate.

Q. Are there many consignees?

A. Yes, sir; a great many.

Q. A great many on each trip?

A. Yes, sir.
Q. The number of bales of cotton consigned to each varies?
A. Yes, sir.
Q. Where is that cotton taken to after it leaves the levee?
A. To the presses.
Q. According to the orders given by the consignees?
A. Yes, sir.
Q. Each consignee has his press?
A. Yes, sir.
Q. How is it taken from the levee?
A. By wagons, drays, and cotton floats.
Q. Driving up to the different piles?
A. Yes, sir.
Q. Is it not necessary for you to have a space to drive up to the cotton?
A. Yes, sir; gangways for them to get at the cotton and gangways to get out after they are loaded.
Q. How long have you been connected with the steamboat business in this port?
A. Ever since the war, and some years before the war.
Q. How does the space which is set aside for the discharge of the steamboats compare with the space which is devoted to discharging other crafts that come to the city?
A. I should say it was very much in favor of the steamboats.
Q. Is it level?
A. Yes, sir; level.
Q. Now, from your experience, what difference would it make if, instead of having the space which you have at present for the discharge of these steamboats, the space was confined to the wood-work along the wharves to a space of about a hundred yards beyond the wood-work?
A. You could not get along; the packets could not make time, and the boats would lie there for an indefinite length of time.
Q. The White, the Natchez, and the Richardson make one trip a week now?
A. Yes, sir.
Q. Upon the state of facts that I have given to you, how many trips a month do you suppose they could make?
A. Well, I don't know; may be two, if they all came in as they do now.
117 Q. You say you discharge the Ouachita packets?
A. Yes, sir; that is, my man does, under my superintendence. I look after him.
Q. Have you had any experience of the effect produced by the electric lights since they have been erected?
[A.] Not particularly; only from what I hear; that is all. I don't know anything personally. It is a convenience at night.
Q. Have you been down at the levee at night time since then?
A. Frequently.
Q. What effect have they upon furnishing convenience to passengers that land in the night time?

A. Nobody could answer that; a great convenience. Before that the levee was perfectly dark. When the levee was full of cotton you could hardly get through there.

Q. Where is the largest open space on the levee front of New Orleans for any boat to discharge freight?

A. Well, I suppose the space from Common street to Poydras street.

Q. What boats land between these limits?

A. Pretty nearly all of them.

Q. These Anchor Line boats land between these limits?

A. Nearly all the time.

Q. And the Ouachita packets?

A. Yes, sir; the packets—that is, the larger ones—and the Memphis boats, three of the largest carriers that come here—the White, the Richardson, and the Natchez.

Q. In the winter season, during the busy times, how much time, on an average, is the White in port?

A. Eleven hours—from eleven to twelve hours. She never has over eleven hours daylight.

Q. What is the largest cargo that you have known the White to bring down here?

A. I don't recollect exactly, but I can approximate it. It was fifty-five hundred bales and eleven thousand sacks of seed.

Q. How does the patronage of the White for up freights compare with other boats? I mean all of the boats.

A. Very favorably. I think that, take it all the season round, she handles as much freight as any of them.

By Mr. BENEDICT:

Q. You steamboated a part of your career here, have you not?

A. Yes, sir.

Q. There is a complaint in this case that ten cents a ton for wharfage upon these boats is high; that the electric lights and the police of the wharves and the use of the wharfinger are unnecessary for the accommodation of steamboats at the wharves erected by the city to accommodate them. State, from your experience, what you think of the subject-matter; what your experience has been relative to it.

A. Well, I think that the police and the wharfingers are, in my experience, indispensable.

Q. What reason have you for giving that as your experience?

A. In the first place, if we had no wharfinger to supervise the moving of freight the levee would become blockaded and business would come to a dead stand-still. During my experience of the time that the Republicans were in power they had their wharfingers who did not do their duty, and I have frequently been on boats that lost a trip from their negligence in not having the cotton seed and Western produce removed off the levee promptly; and I have seen three or four packets lying outside of the steamboats waiting for a space to put the cargo off. I have known the Pargoud to lie from Thursday to Monday morning before she could put a bale of cotton off.

Q. How have these wharfingers of late years performed their duties?

A. Well, very well; it was not so we could not do it.

Q. How have these companies of boats that deliver freight at the port of New Orleans during late years compared with those of former years?

A. In large excess.

Q. How do they be handled?

A. By increased wharfage facilities and the efficiency of the wharfingers.

Q. Are the wharves on an incline or on a level?

A. On a level.

Q. What advantage is that to landing vessels laden with their cargoes?

A. I cannot calculate it. I should think it would be immense, from the fact that you can handle it much cheaper.

Q. Has the city of New Orleans given to the steamboats of
118 this port any larger space of ground outside of the wharves for the use of vessels unloading their cargoes?

A. All that batture has been filled up and used; we could not get along without it.

Q. How is that batture improved with shells?

A. It was filled up first and then been shelled and shelled and shelled. At one time the Vicksburg boats—Captain Cannon and Captain Leathers—paid. I do not know what amount, but, besides paying their wharfage, they paid a lot of money to have this place shelled and to keep it shelled to facilitate their business, and the city contractors, Eager, Ellerman & Co., were continually putting shells on it.

Q. Have you seen boats loaded and unloaded at St. Louis?

A. Not for a number of years.

Q. How many years ago did you see them?

A. In 1868 or 1869.

Q. How were they unloaded at St. Louis?

A. I was up there on the Pargoud. We unloaded on an upgrade and rolled the freight upon the bank. My recollection, if it is right, for it is sixteen years ago, is that we rolled it on the upgrade, and I think we were about two days discharging.

Q. Now, take the same cargo that you saw discharged off the Pargoud, do you know in what length of time, and with the same force of men, could you discharge it here at the steamboat landing in New Orleans?

A. Five or six hours, I reckon.

Q. Take casks of bacon to be unloaded at New Orleans and the same casks of bacon to be unloaded at St. Louis, and what gang of men would you put?

A. If they put it into the wharf-boat it would be equal, but if you rolled it on the bank it would be three times the labor.

Q. Would you not have to take a line with five or six men?

A. Yes, sir; carbuckle it up.

Q. Where the steamboats land at the port of New Orleans, what would you call that here?

A. I should call it the center.

Q. Is it not the very heart of the city?

A. Yes, sir.

Q. Where are the produce houses compared with the steamboat landing?

A. In the immediate vicinity.

Q. Where are the principal hotels—in what vicinity from the steamboat landing?

A. In the same vicinity.

Q. Where are the main lines of street cars?

A. Three lines terminate at the levee.

Q. This steamboat landing is about equidistant above or below Canal street?

A. I think it extends a little further up from Canal street.

Q. But about the center of it is Canal street?

A. Yes, sir.

Q. What is Canal street compared with the other streets of New Orleans?

A. I think it is the main artery.

Q. Where do the different lines of horse-cars congregate—or their depots or resting places?

A. On Canal street.

Cross-examined by Mr. KENNARD:

Q. What is about the width of the earth portion of the levee available for steamboats from where the plank ceases?

A. Well, I cannot tell—but about six times as much as the wood-work.

Q. Do you know how many yards the wood-work is?

A. I cannot say how many yards or how many feet; I never measured it. I know it is a very small portion, except when you get above Gravier street; there it extends further out. There is more wood-work above that.

Q. The portion of the levee that was originally dedicated to the steamboats has been trespassed upon somewhat of late years by the railroads running along the levee, has it not?

A. Well, I was always in favor of railroads. That track was removed by the property-holders; the Steamboatmen's Association had to fight about it last year and had the track of the Mobile railroad moved over into the street; then we had abundance of space. In 1867 or 1868 I was captain, and from all our receipts, so far as I can compare the figures, I don't think we were getting one-third as much cotton as we are getting now, but I saw cotton up eight
119 or ten tiers high for want of room—that is, when the city had charge of the wharves. We used to advance eleven dollars a bale internal-revenue tax, and the people collecting from the steamboats would be in need of money, and we could not collect money except from the draymen's receipt. This cotton was ten tiers

high, and we could not get at it to assort it; for some time we could not get at it to collect the money.

Q. It is a matter of fact that there are several railroad tracks on the levee between the houses along the street and the wood-work?

A. I don't know any part of the levee where there is a railroad track now that was ever used to put produce or cotton on.

Q. Then the complaints that were made were without fundation?

A. Well, I will tell you: Within the last two years the track of the Mobile railroad was removed from the levee onto the street, and it keeps up to Poydras street and then makes an acute angle and comes around the Morgan station. I don't know of any produce being put there.

Q. That is the only railroad track there?

A. That is the only one I know of.

Q. The Morgan railroad has a track there?

A. It is on the street; but I understood your question to be, Is there any railroad track on the space that was formerly used for produce? I don't know that they ever put cotton or produce as far back as where the railroad tracks are; certainly not since the sugar sheds have been in existence. My experience goes back a great way. We used to land steamboats where the Mobile railroad now is.

Q. Are not the sugar sheds an impediment to commerce where they are?

A. Well, they are, under the present negligence. I am not to show favor to the sugar brokers. I think they are somewhat of an impediment—that is, below Custom-House street.

By Mr. BENEDICT:

Q. During the different occasions that you discharged steamboats, could you give me an instance of the discharging of the White, during what time you discharged it, and what became of the cargo?

A. Yes, sir.

Q. State it.

A. On one trip—I can get at it exactly—that she had over five thousand bales of cotton and about eleven thousand sacks of seed, and she was discharged in five hours and a half.

Q. What became of the cotton?

A. That evening there was not a bale of cotton on the levee.

Q. What became of it?

A. It had been hauled off to the presses. It had been assorted, and, if my memory serves me right, I did not get a wrong bale to the presses. It was delivered, and I had not to go to the presses to look up a single wrong bale or had a wrong bale haule I back, and I felt proud of it.

Q. What enabled you to do that?

A. We had broadside gangways, and we worked it by four gangways.

Q. Had the levee being level anything to do with that?

A. Yes, sir; the level space we had to use, we had her stages even with the levee and not a thing on the levee.

Q. From your experience in handling cargo on the levee—cotton—and your experience as a steamboatman, could you have done that at any other port along the river; and, if so, in what time could you have done it?

A. I don't know of any other place you could do it outside of New Orleans, because you have the best facilities here.

By Mr. KENNARD:

Q. Had the boats that came here last season a broadside gangway?

A. Well, generally about Mardi-Gras, when a great deal of people come, but they do not have a broadside gangway, but almost all the season they do have them.

Adjourned to Wednesday, February 14th, 1883, at 3.30 p. m.

CHARLES T. PIERCE, a witness sworn and examined for defendants, says:

By Mr. DENÉGRE:

Q. What is your occupation?

A. Pilot.

Q. Pilot of what boat?

A. Of the J. M. White now.

120 Q. How long have you been a pilot?

A. Thirty years.

Q. On the Mississippi river?

A. Yes, sir.

Q. What are the principal boats that you have been pilot on?

A. Of the large boats I piloted on the Robert E. Lee, the Belle Lee, the Natchez. I have piloted on every big boat that has ever run on the river—on the Eclipse before the war, the General Quitman, the Bulletin, the John Simmonds, and all of these big packets.

Q. Have you run in the St. Louis trade?

A. Yes, sir; but not for some years.

Q. You have been pilot continuously on the White since the erection of the electric lights?

A. Yes, sir; I have been on her since the electric lights were erected.

Q. What is your experience of the electric lights; are they a benefit or a detriment?

A. They are a benefit, because I have tried them. I have often been in dark, heavy weather, and I know them to be a benefit.

Q. Can you relate any circumstance during your experience in which they have been a benefit?

A. Yes, sir; on three or four trips this season we could not have got in without them; they helped us in.

Q. Do you know there is any benefit by them to the cargoes that lie on the levee at night?

A. I don't know about that, but I know the wharf is lit up and you can go across it as in daylight. Before that it was dark.

Q. You have been in St. Louis?

A. Yes, sir.

Q. What kind of wharf is there at St. Louis?

A. It is rather a steep wharf, made out of this heavy rock.

Q. Is there any wood-work there?

A. No, sir; all rock.

Q. Now, from your experience derived from the length of time that you have been engaged on the river, do you know whether the White and other cotton carriers on the Mississippi river could transact their business here in this city if the wharf here was the same as at St. Louis?

A. The White could not go to the wharf at St. Louis, and could not unload in one day, as we do here. She could not discharge her cotton and freight. It could not be done.

Q. Do you know how long you lie in port during the winter season?

A. Well, we lie here, you may say, from five o'clock in the morning until five in the evening. We do not generally get in here before daylight, and we leave at five o'clock in the evening.

Q. During that time you unloaded your boat and loaded her?

A. Yes, sir; during the business season.

Q. What is the ordinary load of the White?

A. That is something I cannot exactly tell you, but she carries a weight of about seven thousand bales; five or six thousand bales of cotton, and then they have a great deal of seed.

Cross-examined by Mr. KENNARD:

Q. Has the White an electric light on her of her own?

A. Yes, sir.

Q. Do you find that useful in running the river from New Orleans?

A. Yes, sir; we could not do without it now as we used to.

Q. It answers the same purpose on the river that it does here?

A. Yes, sir; we find our landings and everything by the electric light. We could not get along with a torch as we used to.

Q. Have you one on your boat?

A. Yes, sir.

Q. You say the White could not unload and load at St. Louis as quick as here?

A. Yes, sir.

Q. I suppose you mean that you could not do it on account of the steep bank?

A. Yes, sir; you could not use trucks there as here. You would have to do it with the cotton hook at St. Louis.

Q. I suppose the electric lights on the wharf are a benefit in the way of watching the freight?

A. That is something I cannot tell you anything about. It is out of my line of business. I don't know anything about that.

121 LOUIS A. DROUILLARD, a witness sworn and examined for defendants, says:

By Mr. DENÉGRE:

Q. What is your occupation?
A. A pilot.
Q. How long have you been a pilot?
A. Since 1843.
Q. What boat are you pilot on at present?
A. The J. M. White.
Q. Have you been pilot of any other boat?
A. Yes, sir; all the large ones.
Q. Have you ever run in the St. Louis and Memphis trade?
A. I have not been in them for eight years. I was pilot on a boat.
Q. You are thoroughly familiar with the wharves at St. Louis and Memphis and other points?
A. Yes, sir.
Q. What has been your experience of the electric lights?
A. Well, they are just indispensable.
Q. In what are they particularly beneficial?
A. In finding the landings of the White, and finding the landings here at the wharf on a dark night or foggy weather.
Q. Can you relate any experience that you have had in which the electric lights are particularly beneficial to you?
A. The first experience I had after their first introduction here, was a dark and drizzly night, and the wharf showed so plain that I had no trouble in getting in, whereas if it was by the gas light, as before, I would have to grope my way down the best I could.
Q. How long is the White usually in port during the winter season?
A. About ten or twelve hours.
Q. Does she discharge her cargo and take on her uptrip in that time?
A. Yes, sir.
Q. Why is it that you are so able to discharge with such dispatch and to load with such dispatch?
A. They have the wharf and other conveniences.
Q. Do you know of any other place on the Mississippi river the same?
A. No; sir; no comparison.
Q. Do you know of any port or place in which steamboats could transact business with the dispatch they transact it in the city of New Orleans?
A. No, sir; no place.
Q. What is the character of the wharf at St. Louis?
A. It is a heavy grade, and they have not room.
Q. Is there any wood-work at all in it?
A. No, sir; none at all; stone pavements.

Cross-examined by Mr. KENNARD:

Q. You testified that the electric lights on the levees are indispensable. I do not suppose that you use that word in its literal sense, that they could not be done without?

A. No, sir; they could be done without, but it is such an improvement that they could not be done now without them.

Q. By indispensable you mean you could not get on without them, yet you have done without them for a long time?

A. Well, since these improvements were made I wonder how we got along before without them.

Q. You use the electric lights on the Mississippi river up and down?

A. Yes, sir.

Q. And it answers the same purpose in landing?

A. Yes, sir.

Q. You said that a boat could not unload so rapidly at St. Louis; do you not know, as a matter of fact, that the general custom in St. Louis is to unload on the wharf-boats and not put the cargo on the bank?

A. They do not, because they have not got room.

Q. But, as a matter of fact, they do unload most of the boats on the wharf-boat?

A. Yes, sir.

Q. They present the same level as the levee here?

A. No, sir.

Q. But what serves them at present is level?

A. After they get on the level; yes, sir.

Q. What I mean to say is that they unload and load at St. Louis, where it is as level a surface as the wharf here?

A. Yes, sir.

Q. But not so large, of course?

A. Yes, sir.

122 Q. Then it would only be a question of whether the wharf-boat was as large as the space here as to whether you could unload and load so rapidly?

A. You could not do it; you have not got room.

By Mr. DENÉGRE:

Q. What is the length of the wharf-boat?

A. That depends upon the hull of the boat.

Q. But the usual length of a wharf-boat?

A. About two hundred and fifty or three hundred feet.

CURT HOLMES, a witness sworn and examined for defendant, says:

By Mr. DENÉGRE:

Q. What is your occupation?

A. Just now it is captain of the White.

Q. How long have you been engaged in steamboating on the Mississippi river in one capacity or the other?

A. Sixteen years.

Q. What has been your experience with the electric lights that have been put upon the levee?

A. Well, I think they are very fine things.

Q. Do you find them of any benefit?

A. Yes, sir; particularly so in a fog coming into New Orleans.

Q. Do you find them of any benefit?

A. A great benefit to the White on several occasions that we have been down along the shipping, where I would not have come in if the lights were not there. We could see these lights and could tell about where we were; otherwise it was very dangerous coming down there.

Q. Is there any benefit to you on the levee for you to have a large open space in front of the landing?

A. Yes, sir.

Q. In what way?

A. Plenty of room for the boats unloading and loading.

Q. How long does it take you in the winter season with a full cargo to unload and take up your cargo?

A. Well, usually about ten hours.

Q. What is the quickest time you ever done it in your life?

A. We have been in here as late as ten o'clock and gotten out at six or seven o'clock in the evening.

Q. With a full load coming in?

A. Yes, sir; a full load of seven thousand bales of cotton and seed.

Q. Have you ever reached port here in the evening with passengers on board?

A. Yes, sir.

Q. Do these passengers leave the boat at night to go to the hotels?

A. Yes, sir.

Q. Do you know whether the electric lights are of any benefit to them?

A. Well, I should say they would be a great benefit. It is very pleasant, at any rate, to have a light across the levee on a dark night.

Q. Is the electric light of any benefit to boats in the shipping of the crews at night time?

A. Yes, sir; I should think it would be after dark.

Q. What has been your experience in shipping crews after dark before the electric light was put up?

A. Frequently not getting out at all. Of course I cannot say that the want of the electric lights prevented us from doing it.

Q. But did you find any difficulty in keeping your crew on board after you shipped them?

A. Well, I don't think we ever lay there on account of the crew since the electric lights have been put up.

Q. Have you ever laid over before that time?

A. Yes, sir.

Q. Often?

A. We have laid over on certain occasions on the Pargoud.

Q. What was the exact cause of your lying over?

A. For want of a crew.

Q. What became of your crew?

A. The crew would go off on the levee and not be there at all.

Q. Since the electric light was put up you could see the crews and be able to get them together?

A. I don't know of that; I know that we did not lie over on account of the crew since they have been up.

Q. All you can say is that since the electric light was put up you have not had any trouble at all?

A. Yes, sir.

123 Q. Now, if the levee room that you have now was decreased, and brought down to one-fourth of the space instead of the whole, could you make the trips that you make now?

A. No, sir; nor one-half either, I don't think. I don't know of any other place where our business could be done at all as we do it here all the time.

Q. What is the distance between New Orleans and Greenville?

A. It is about five hundred and fifty miles.

Q. You go to Greenville and come back, staying at the different landings, within a week.

A. Yes, sir; within a week.

Q. Do you know whether, while during the day when the cargo is discharged, that any of the freight is carried by the consignees?

A. Yes, sir.

Q. Is there space enough there to allow the consignees to take it away?

A. Yes, sir; I have seen it go away almost as fast as it came off the boat.

Q. So that the levee is broad enough to allow the floats and drays to came in and take the freight off at the same time?

A. Yes, sir.

T. B. THRIFLEY, sworn in behalf of defendants, says:

By Mr. DENÉGRE:

Q. What is your name?

A. F. B. Thrifley.

Q. For whom are you working?

A. Myself.

Q. What boats do you discharge?

A. All the Vicksburg packets.

Q. How long have you been engaged in that business either for yourself or for others as clerk?

A. About eight years.

Q. How are those boats discharged—that is, how is the cotton carried out, and how is it placed?

A. Carried on trucks.

Q. How is it placed on the levee?

A. With different flags, according to the different consignees.

Q. Any space left between different lots?

A. Space for a wagon to go through: one of these floats, about six feet wide, I reckon.

Q. On a full cargo, about how many different lots do you get?
A. From fifty to sixty-five different lots.
Q. And they vary in number of bales?
A. Yes, sir; sometimes one thousand or twelve hundred for one consignee, and from that down to one bale.
Q. And each one of these lots is placed under a different flag?
A. Yes, sir.
Q. You do not receive for any of the boats?
A. Yes, sir; we receive for our boats when they are out of port.
Q. Do you receive for them when they are in port?
A. No, sir.
Q. Do you know whether boats receive at the same time that they discharge?
A. Yes, sir; all the time; the White gets in on Thursday and leaves the same day; receives her cargo and discharges on the same day.
Q. Do you know whether that space which is now used by the boats could be decreased in any way?
A. Not possible of doing at all.
Q. Do you know all the space which is there?
A. Yes, sir; we are crowded as it is sometimes.

Cross-examination by Judge KENNARD:

Q. You use the wood-work and the ground beyond the wood-work, both, do you not, Mr. Thrifley?
A. Yes, sir.

By Mr. BENEDICT:

Q. As far as the railroad track?
A. Yes, sir.

By Mr. DENÉGRE:

Q. How far is the railroad track from Mr. Conery's store?
A. There is one of them about ten feet.
Q. And another one?
A. Twelve or fourteen feet.
Q. Is Mr. Conery's store the first to the levee?
A. Yes, sir.

By Judge KENNARD:

Q. Which is the widest, the wood-work or the ground?
A. The ground.
Q. How much, about?
A. Three times.

124 Capt. WILLIAM CAMPBELL, being duly sworn, deposes and says:

By Mr. DENEGRE:

Q. You are at present captain of the steamer Ed. Richardson?
A. Yes, sir.

Q. She is in the trade between New Orleans and Vicksburg?

A. Yes, sir.

Q. How long have you been captain of the Ed. Richardson or the boats in that trade?

A. Well, I don't know exactly; about twelve years, I think, sir; ten or twelve years.

Q. How long have you been steamboating as a captain?

A. Ten or twelve years.

Q. Have you ever run to other points besides those two points?

A. Not as captain of a vessel.

Q. Have you ever run in any other capacity between other points?

A. Not as captain of a vessel; I ran as steward.

Q. How long have you been steamboating altogether?

A. About thirty-seven years this spring.

Q. How many trips a week does your boat make?

A. One.

Q. What is the average time that you remain at port during the cotton season?

A. Sometimes one day; you mean night and day?

Q. Yes, sir.

A. Yes, sir; sometimes twenty-four hours; sometimes twelve hours; sometimes eight or ten hours; just as the weather permits and business permits.

Q. What is the carrying capacity of the Richardson—cotton-carrying capacity?

A. I suppose she would carry the weight of 8,500 bales.

Q. You commanded the Str. R. E. Lee just prior to the "Richardson?"

A. Yes, sir.

Q. What was her capacity?

A. She would carry about—say 6,000 bales; I have had over that on her.

Q. How long did it take you, when you came in port fully loaded, to discharge your cargo and take your up cargo on board at the wharves in this city?

A. Well, sir, when we would be here two days in port we would not hurry so much; when only one day in port we would discharge sometimes in five hours.

Q. What is the shortest time that you have discharged a full cargo?

A. I have come in at nine o'clock in the morning, and have discharged a full cargo, and have taken a fair uptrip and left at 5 o'clock in the evening on the same day.

Q. Are you acquainted with the wharves at St. Louis and Cincinnati?

A. Yes, sir.

Q. Could you discharge your cargo of cotton and take your upper cargo in the same time at St. Louis as you can here in this city?

A. Well, I could not take it out and put it in in the same length

of time. I don't think there is any wharf anywhere that gives the same facilities as New Orleans.

Q. Why?

A. Because we have a plank wharf; half of our cargo goes over a wharf that reach half way across the levee, and it is level, and we can work trucks easily, and there is no place that gives the same facilities that New Orleans does, that I have seen.

Q. How are your cargoes discharged; what is the method?

A. We land the boat, get our stages out, and commence work and trucking; the stuff is sorted out by the clerk in different piles; for instance, you would go on the levee; you would not probably understand it; you would see flags all over the levee; that's the assorting of the cargo, each flag representing a different consignment; we have to unload, assort, and have it hauled all at the same time, and the wharf gives us the facilities to do all of that, which I don't think any other wharf would do so.

Q. Is it necessary to assort these cargoes after getting them on the levee?

A. Yes, sir; we sort them as they are being put on the levee; we could not come in and throw them on the levee and then assort it; it would have cost double the money. By discharging, assorting, and delivering at the same time it gives us immense facilities and at half the cost. If we were to put it out any way, why, sir, the discharging clerk would have to get a lot of laborers to move that cotton around; why, sir, it would be literally impossible to do it; I don't think it could be done without a great loss of cotton.

125 Q. Now, you make four trips a month?

A. Yes, sir.

Q. If you had only such facilities as are afforded to you at St. Louis how many trips a month can you make?

A. I don't know; it looks like as if it would take double the time to handle a cargo as we have; at such wharves as they have I don't think that I could put out a cargo and take one in forty-eight hours, where I may do it here in eight or ten. Then the whole system of their wharves is "uphill." Here we have a bale of cotton that weighs five or six hundred pounds which one man can take and handle on our wharf here, whereas in St. Louis there it would take at least six men to pull that same bale up, and you can yourself make the calculation as to what the cost would be in the two places. I never discharged anything at St. Louis. I never was in a capacity to handle cargoes, but from observation I know that of the two places it would certainly make a great deal of difference.

Q. Would it make a great deal of difference in your receipts if you had only such facilities as are afforded at St. Louis and Cincinnati?

A. Yes, sir; I should think so.

Q. Then, with what they call the "high-price wharfage," would you not rather pay that than have such facilities as are afforded at St. Louis?

A. Yes, sir; I should think so. I would rather give the difference so as to get out on time and do my business.

Q. Then it is more a matter of facilities afforded than price paid?

A. Yes, sir.

Q. What is your experience of the electric light and the benefits therefrom?

A. Before they were put up I was not in favor of them, but since they have been put up I find that I have been mistaken right smartly. I have come in here at all hours of the night, in foggy, clear, and dark nights, and in fine moonlight nights, and we find that the electric lights are quite a benefit to the landing in coming in; but I did not approve of them before they were put up, because I did not think then that they would be of benefit to us. I thought they would be an objection to the pilot.

Q. What difference would it make to you on a foggy night?

A. Well, you not being a steamboatman, I don't know whether you would understand it or not. There are Government lights along the river, and they are a great help to us in a fog, and we can see them across the river, and these electric lights are a great deal stronger, and we can see them a great deal further.

Q. Do you often come in at night?

A. Yes, sir.

Q. Do you carry passengers on your boat?

A. Yes, sir.

Q. Do you know whether the electric light is of any advantage and benefit to passengers?

A. I don't know.

Q. In going across the levee?

A. Yes, sir; undoubtedly. Oftentimes our wharves have got holes in them, and these lights are certainly of benefit to the people going across the levee.

Q. Any facility or benefit to you in watching your cargo?

A. Yes, sir; a great deal.

Q. What is the quickest time that you have ever made in discharging the "Richardson" or the "Lee?"

A. Well, I believe the "Richardson" was the quickest; that was last "Mardi-Gras;" to oblige those gentlemen of leisure—that have nothing to do—I came in here on that day and tied the boat at the wharf; got out our stages, and at nine o'clock commenced work, and at half-past twelve I left the wharf with the King's party. I put off between thirty-six and thirty-seven hundred bales of cotton. It was done, sir, between nine o'clock and half past twelve. That was the fastest work that I ever saw done or heard of in all my life.

No cross-examination.

Testimony Taken by Consent on Behalf of Defendants at the Office of Bayne & Denegre, Esqrs., New Orleans, March 29th, 1882.

Present: George Denegre, Esq., solicitor for the defendants; Charles S. Rice, Esq., solicitor for the complainants.

P. O. Melancon, a witness produced, sworn, and examined for defendants, says:

By Mr. Denegre:

Q. What is your occupation?

A. A steamboat captain.

126 Q. How long have you been steamboating?

A. I have been steamboating since 1868.

Q. What steamboat are you commander of at present?

A. I am commanding the Edward J. Gay.

Q. How long have you been commanding the Edward J. Gay?

A. Since October, 1881.

Q. What boats did you run on previously?

A. I was interested first in the New Era, then the Nina Sims, the St. John, the B. L. Hodge, the Southern Belle, and the New St. John.

Q. Did you ever come into this port at night before the electric lights were put up?

A. Yes, sir.

Q. Have you ever come into this port at night time since they were up?

A. Yes, sir.

Q. Is there any difference?

A. Yes, sir; a vast difference.

Q. Are the electric lights of any advantage, so far as your experience goes?

A. I think it is a very great advantage coming into port on a dark night.

Q. Have they been any advantage to you since they were erected?

A. Yes, sir.

Q. Would you be willing to dispense with them and go back to the old system?

A. No, sir.

Q. Even suppose the rates of wharfage were reduced?

A. I think I would rather pay the present rates of wharfage with the lights.

Q. Can you state how the condition of the wharves at present compares with the condition of them under the former lessees?

A. I think they are kept in better condition now than with the former lessees.

Q. How about the levees back of the wharf?

A. The levees the same way, the groundwork.

Cross-examined by Mr. RICE:

Q. Are you one of the owners of the Edward J. Gay?
A. No, sir.
Q. Or of any other steamboat?
A. No, sir; not at present.
Q. When you speak of the condition of the wharves and levees, what parts of the wharves and levees do you refer to?
A. That part from Canal street up and down. My observation is more particularly at that point down than it is up.
Q. You refer to Canal street; how far down?
A. To the French market.
Q. Do you know the condition of the wharves below the French market?
A. No, sir.
Q. Nor above Canal street?
A. Only by going by.
Q. What time in the day does the Edward J. Gay get here?
A. At different times, day and night; in the winter time we get here at night.
Q. What advantage is the electric lights to a vessel coming here and leaving here in the day time?
A. None at all.
Q. They do not load at night?
A. Sometimes we have to finish loading up freights at night, going out.
Q. Up to how late at night?
A. We have left here as late as half past six or seven o'clock with the Gay.
Q. How often does that happen?
A. Not very often.
Q. You make two trips a week?
A. Yes, sir.
Q. You pay five cents a ton each trip?
A. Yes, sir.

By Mr. DENÉGRE:

Q. Are the electric lights of any advantage to you when you are belated that way?
A. Yes, sir.
Q. Do you know whether vessels that leave in the morning receive freight the day before?
A. Yes, sir.
Q. And the freight lies on the levee all night?
A. Yes, sir; some boats.

By Mr. RICE:

Q. You speak of boats leaving in the morning; does the Gay leave in the morning?
A. No, sir; but we have packet boats leaving here in the morning.

Q. What boats?

A. The boats between here and Donaldsonville, and the lower coast boats.

Q. They are small boats?

[A.] Well, the Jesse K. Bell is a large boat.

127 Q. What time do they leave?

A. From ten to eleven.

Q. They do their loading in the day?

A. Yes, sir; these day boats.

FRANK M. HALL, a witness sworn for the defendants, says:

By Mr. DENEGRE:

Q. What is your occupation?

A. A steamship and ship broker and ship agent.

Q. How long have you been engaged in that occupation?

A. About fifteen years.

Q. Are you familiar with the facilities furnished to the shipping in the nature of wharves and levees in this city?

A. Yes, sir.

Q. Will you please state the nature of these facilities.

A. What do you mean by that?

Q. I want to know whether you have great facilities in loading or cramped?

A. If you take the tonnage of this city—as large as this is—we have not port facilities for the tonnage that comes here.

Q. What is your experience of the electric lights since they were put up?

A. I think it is a very good thing, and a benefit to the shipping.

Q. Will you state in what that benefit principally consists?

A. It consists in the protection of property; you can better look after it, and also in discharging and loading at night.

Q. What is the present condition of the steamship wharves compared with before?

A. They are in better condition now than ever I saw them.

Q. Are they kept in good condition?

A. They are kept in very good condition.

Q. What are your facilities to carry on your business now as compared with the facilities furnished you for the last three or four years under the other lessees?

A. We have more facilities and more wharf room—in extended room. Before we had little aprons and now they are connected, affording more room to discharge cargo.

Q. That is done under the present lease?

A. Yes, sir.

Q. What is the nature of the work done by these lessees as compared with the nature and stability of the work done by former lessees?

A. That I cannot tell; I don't know.

Q. Do you know whether more cotton has been loaded upon the wharves under the present lessees than under the old lessees?

A. More cotton has been loaded on the wharves this season than ever before, and, as a proof, are stronger than ever we thought they were.

Q. Do you know anything with regard to the rates of wharfage at other points besides this one?

A. I think these rates are as cheap as any part of the United States, and, I think, cheaper. They have more wharfage room and longer time.

Q. Would you be willing to go back to the old system of gas lights and apron wharves if the wharfage was reduced?

A. No, sir.

Mr. Rice objects to the question.

Q. It is of the greatest advantage to a vessel in point of the money that is saved? Is it a small rate of wharfage or increased facilities?

A. Which is the greatest advantage to a vessel?

Q. Yes.

A. If you take it as an individual vessel she would want cheaper wharf room, but to take the tonnage of the city here we make no complaint of the wharfage dues.

Q. What comparison does the wharfage bear compared with the expenses paid by a vessel by daylight?

A. They are considerable, of course, in receiving and discharging cargo.

Cross-examined by Mr. RICE:

Q. Of what benefit are the electric lights to a vessel that is not loading or unloading which is lying at the wharves?

A. In the protection of her cargo which every vessel has here most of the time on the dock. They can watch it better, and it is also a protection to the vessel's officers coming in the night time to the vessels. Previous to the erection of the electric lights it was dangerous for an officer to go to his vessel after night fell.

Q. These are the chief advantages of the electric lights?

A. Yes, sir; and in loading and discharging.

Q. Is it customary for seagoing vessels to load and unload at night?

A. Yes, sir.

128 Q. Is that the custom, or is it the exception?

A. I don't know whether it is customary or not; it just depends upon the time.

Q. Is it the regular course for seagoing vessels to load and unload at night or is it an exceptional case?

A. Not frequently; I am discharging a vessel at night now.

Q. The advantage is to that vessel unloading. Now, what advantage is it to the next vessel that is not?

A. It is an advantage in the protection of her cargo; she has cargo on the wharf.

Q. And if she had no cargo on the wharf it would be to the officers?

A. Yes, sir.

Q. You are of the firm of Hall & Vaughn?
A. Yes, sir.
Q. You are agents for steamships and sailing vessels?
A. Yes, sir.
Q. The vessels of which you are agents lie where?
A. They generally lie between Calliope and Eighth streets.
Q. That is the upper part of the city?
[A.] Yes, sir.
Q. What is the average time of a foreign steamship in port?
A. All of them are foreign steamships; it depends upon their capacity.
Q. But what is the average time?
A. They are here from ten days to three weeks.
Q. The ten days is the shortest time and three weeks the longest?
A. Yes, sir.
Q. What about sailing vessels?
A. Sailing vessels are from three to six weeks. Sailing vessels do not get their cargo as quick as a steamer; they lie four abreast.
Q. And they pay under the ordinance of the city only one rate of wharfage dues?
A. Yes, sir; and they can stay here for sixty days for the same price.
Q. Is it an unusual thing for a vessel to lie here sixty days?
A. It is now. We do not have many of them lying here that time. Sailing vessels lie three or four abreast.
Q. Wherein do the wharves that are built now differ from the wharves that were built under preceding leases?
A. We have some of them that are connected, where before we had these little aprons.
Q. And what about the character of the work?
A. They are kept in better repair.
Q. How long is it since they have been kept in better repair?
A. Within the last year.
Q. The river is very high at this time of year?
A. Yes, sir.
Q. And later in the summer it usually falls?
A. Yes, sir.
Q. What is the effect of the falling of the river on the wharves?
A. I have not noticed any in the upper portion of the city.
Q. Have you been to the lower part?
A. I have not been there.
Q. It is reported that the falling of the river is putting it in bad condition?
A. Yes, sir; that is the report.
Q. That does not affect the upper part?
A. No, sir; it does not appear to be affected by the fall and rise of the river.
Q. Those that we built within the last two years are new wharves; are they any stronger when new than years old?
A. We cannot state by anything unless the large portion of cargo

that was put upon them this year. They were tested this year better than ever before.

Q. The reason for not testing them before was because you were afraid they were weak?

A. Yes, sir.

Q. But no tests were made?

A. No, sir; we were always afraid to try it.

By Mr. DENÉGRE:

Q. Can you state whether your ships employ as many watchmen now as they usually did?

A. About the same. Every vessel had a watchman, and they have now, and also we have a system of watchmen that we have not had before. Every vessel used to take a watchman, whereas they assist one another now.

L. LACOMBE, a witness, produced and sworn, says:

By Mr. DENÉGRE:

Q. What is your occupation?

A. A steamship and ship agent.

Q. How long have you been in that business?

A. I have been in it as clerk and principal for thirty years.

Q. Where do the ships that you represent lie?

A. Uptown, from the Pelican press up.

Q. Are you connected with the Maritime Association?

A. Yes, sir; as secretary.

129 Q. Can you state whether the electric lights are of benefit or disadvantage to the shipping in this port?

A. I can only state that since the electric lights have been put along the river my mind has been quite disabused—since I was opposed to the lessees; when I was one of the persons who tried to form a wharf lease for the administration I thought it was a great benefit, and still is, to have the lights along the river.

Q. Do you know in what condition the wharves are kept at present?

A. The last personal observation that I made was Sunday; I took a walk up and down and found them in good condition, heavily loaded with thousands of bales of cotton, from Jackson street to a point nearly opposite the Orleans press.

Q. Are you familiar with their condition under the former lessees?

A. Yes, sir.

Q. How does their present condition compare with their condition in former years?

A. Much better.

Q. Do you know whether they are as heavily loaded down now?

A. I never in my experience saw them loaded as now.

Q. Do they have as much room as before?

A. I find more uptown than I did before.

Cross-examined by Mr. RICE:

Q. Over what space did you walk over the wharf?

A. From the Jackson street railroad down to the Orleans press.

Q. The Orleans press is on what street parallel with the river?

A. I believe it is about post 17, nearly to Erato street; I know it is a long distance.

Q. You speak of the condition of the wharves being better; that was the new portion of them?

A. Some of them are new.

Q. Where the old wharves in better condition than under the old lease?

A. Yes, sir.

Q. How does that happen?

A. Well, being apparently being better fixed up they have a better appearance. The water is now high, and I know how they are fixed up underneath.

Q. What do you mean by fixed up?

A. Their superficial structure is better laid than before.

Q. What was their condition under the old regime?

A. Very poor and rotten.

Q. That came from its being old?

A. From age and from want of care taken by the lessees.

Q. How could they get rotten by want of care of the lessees? How would the absence of care on the part of the lessees prevent them from getting old or rotten?

A. They wear out and also get old, and the lessees did not take care of what would wear out. If a plank was allowed to decay or be broken, as it often occurs, instead of the wharf lessees going to work and attending to it at once they omitted doing so.

Q. Do you undertake to say that there are no omissions of that sort at present in that portion of the wharf between Jackson and Erato streets?

A. I did not come across anything like it; of course, it would be impossible for me to see all the wharf in that extent. It is covered with thousands of bales of cotton, but the portions, both on the river side of the wharf and the ground side of the wharf, that I have occasion to walk upon I found in good condition, and from the actual weight that was on the wharf I concluded that it must be in better condition.

Q. Are there any portions of the former structure anywhere you walked over that had no planking on them at all? Right at Jackson street itself are there any portions of the wharf with no planking on them?

A. There is at the ferry. I did not see any place at that wharf. I stopped there where the Guesseppa Lanata was for a quarter of an hour, and I did not see anything wrong with it.

Q. Right there, where French steamers are, has not the wharf lately sunk to a considerable degree?

A. Not that I know of; I did not go there; I came by the Jackson street cars, and went to the Guesseppa Lanata.

Q. Then your observations were simply casual?

130 A. Quite casual; when I got on the front I met a friend of mine and we concluded to go to the steamship Aspinwall, or I would not have undertaken to go along the wharf alone.

Q. The river is high now?

A. Yes, sir.

Q. What is the effect on the wharves that takes place frequently on the fall of the river?

A. I noticed, on the fall of the river, that some wharves give way, particularly in the third district.

Q. Have not the wharves in the upper part of the fourth district, both above and below Jackson street, given way or sunk at the time the river has fallen?

A. In the upper portion of the city the wharves give way a little, but very little indeed, as compared with those in the third district: they disappear, but in the upper portion they can be used.

Q. What is the condition of the third district wharves now?

A. I don't know; I have not been down there for some time.

Q. Have you been in the vicinity of the New York steamship landing, second district, lately?

A. No, sir; not for seven or eight months.

ARTHUR J. MITCHEL, jurat waived, examined in chief on behalf of defendants by Mr. DENEGRE, as follows:

Q. What is your occupation, Mr. Mitchel?

A. Representative of T. & G. Forwood.

Q. Representative of T. & G. Forwood. What is the business of T. & G. Forwood?

A. Commission business generally and agents for several steamship lines.

Q. How long have you been in their employ?

A. Thirteen years now—twelve years.

Q. Where do those steamships, which are represented by T. & G. Forwood, run to?

A. Liverpool generally; sometimes to other ports.

Q. Are you at all acquainted with the facilities that are furnished in this port—with the wharf facilities—that are furnished in this port to steamships coming here?

A. Well, I have occasion to see something of it.

Q. What is the nature and character of those facilities that are furnished?

A. They are very satisfactory.

Q. Is there any advantage at all in the electric light?

A. Well, I think it is a decided advantage; it is an economy in the watching. In our experience, it saves two or three watchmen a ship.

Q. Two or three watchmen a ship?

A. Per day. Sometimes we have had as many as four or five men employed before the electric lights were put up; one man answers the purpose now.

Q. What did those watchmen cost you?

A. $2.50 apiece per day.

Q. And how much per night?

A. The same thing.

Q. What are the facilities—what is the nature of the facilities furnished as compared with the wharfage charge?

A. Well, I don't know how other people are fixed; we generally have a key-berth. It is an important matter of consideration to us—a matter of three or four days in loading a ship and labor. I only speak of our own wharf; I don't know how other people are fixed.

Q. Do you consider the wharf charges high for the facilities that are furnished you?

A. Well, they come upon an average to about $35 a day per ship.

Q. I ask you, with reference to the service that is rendered, whether the wharfage charges, in consideration of the service rendered and the facilities furnished, are higher.

A. I don't profess to be familiar with the port charges of other places. I know what they are, but I don't give them in testimony; but I think that our port charges are relatively cheaper than those of Liverpool or New York.

Q. What are the facilities furnished by the present wharf lessees as compared with the facilities furnished by the former lessees?

A. Oh, these are decidedly better.

Q. Is there a great improvement?

A. Well, I must say we changed our wharf; we have now a new wharf, probably the best in the city. I don't know whether that would be a fair criterion, you know. We had formerly a
131 wharf that we had occupied for about ten years. During that time it had been built up; in places, rotted to pieces. It was repaired so badly that it could not hold on it over twelve hundred bales. When new we had put on it forty-seven hundred bales; now we have a wharf that can hold twelve thousand bales (12,000).

Q. That wharf is greater in extent than the old one?

A. Well, it is longer; it is two ship lengths; one-half of it for one ship. One-half of it will hold six thousand bales comfortably; it has held it last November.

Q. Did you occupy that wharf under the old lease?

A. It was a wharf not in existence under the old lease.

Q. It is a new wharf?

A. It is a new wharf—780 feet long; before here none of the ship wharves were connected. Now, so as to make a continuous wharf, there are wharves from Felicity road—I think it is the foot of Felicity road—right up to what was called the long wharf been connected since. They used to be used as ship wharves formerly.

Q. They were not connected under the former lease?

A. No, sir.

Q. What is the condition of the wharves now with regard to working shape; the state of repair?

A. They appear to be in very good condition. I don't know anything about the wharves below Canal street.

Q. As compared with the same wharves under the former lease?

A. I think they are in better condition.

Q. Better kept up?

A. They are better kept up. The approaches are better, too. Now, my opinion is this, as I have stated to other ship agents, that I think our wharves are in better condition to-day than they have been since the war—that is, before the war—because I am told many years ago they were kept in magnificent order.

Q. Do you think it would be an advantage to the steamship companies of this port to reduce the wharfage and dispense with the electric lights?

A. No, sir; I don't think so. I think that the electric light is, in a great measure, a part of the necessities now of the shipping.

Cross-examination by Judge KENNARD:

Q. Do I understand you to say that you have a key-wharf?

A. No, sir; we have a key-berth.

Q. What do you mean by that?

A. Well, that a ship lies alongside of the wharf.

Q. Is that especially designated for your ships?

A. No; not necessarily; we occupy it, though, you know, almost entirely, having ships there, to occupy it all the time; but formerly, when we were crowded, we had a great many times to load outside. We had many more ships this year. Last year, before moving to this new wharf, we had seventeen ships during the season. This year we have had twenty-eight so far, and we have had almost entirely key-berth for these twenty-eight ships. I may say for twenty-three anyhow. Of those seventeen ships two years ago we had, I guess, eight of them that loaded outside.

Q. Now you occupy this wharf almost exclusively?

A. Yes, sir; almost exclusively; have not been bothered by other ships at all; they find room elsewhere to put them; that wharf that we had occupied now is the general wharf; it is at the foot of Jackson street.

Q. What to say in reference with the electric lights I suppose is from your general idea?

A. No; from my—our experience in the bills of the ships of bills of disbursements. I find that we have one man here employed at the rate of $75.00 a month; he is really only paid $45.00; we have to pay $2.50 a night for him; that one man watches sometimes two ships. Formerly, at Jackson street, we had most all of the time two or three men. Five hundred bales of cotton were divided into two little piles, and two men appointed to watch it; beside they had a lamp belonging to the stevedore stuck up on a bale of cotton.

Q. Does not the wharf police watch your freight?

A. But we pay for it.

Q. You pay for it?

A. We pay for it. The harbor police, you mean?

Q. Yes.

A. The harbor protection police; it is not the city police.

132 Q. You pay for your own police?

A. We pay the harbor protection police; they provide the men.

By Mr. DENÉGRE:

Q. You pay the harbor protection police in place of paying watchmen?

A. In place of paying watchmen.

Q. They supply the watchmen?

A. Yes, sir; they supply the watchmen and are responsible for them.

Q. You have been subscribers to the harbor protection police for some time, have you not?

A. Since its organization; everybody is now; it has got to be an obligatory thing as regards cotton now; we were subscribers from the time it was organized, last September a year ago.

By Judge KENNARD:

Q. You don't depend on the city police?

A. No, sir; we cannot depend on them.

By Mr. DENÉGRE:

Q. Will you be kind enough, Mr. Mitchell, to explain to us what a key-berth is, what the advantage of it is?

A. A key-berth is that a ship lies alongside of the wharf; otherwise she would have to lie outside of another ship. It is very hard to explain it in this, that you have to have an example before you. A ship outside of a ship has to pay a great deal more for labor in loading and unloading than the inside ship at the key-berth. On the outside ship it is very often that you cannot go on, for the inside ship may be loading at a certain hatch, and the outside ship has to wait until the inside ship chooses to give way to let her load, and it takes sometimes three or four days', sometimes a week's, loss of time.

Q. As compared with the loss of time to a ship in loading and unloading is the wharf charge of any great concern?

A. Not at all; it does not amount to anything; the whole wharfage of the ship is not much more than one day's detention.

Testimony Taken by Consent on Behalf of Defendants at the Office of Messrs. Bayne & Danégre, New Orleans, La., March 26th, 1883.

LOUIS H. PILIE, Esq., sworn on behalf of defendants, says:

By Mr. DENEGRE:

Q. Your occupation is that of deputy city surveyor?

A. Yes, sir; I am assistant city surveyor now.

Q. How long have you been connected with the city?

A. Since 1837.

Q. In what capacity?

A. Capacity of deputy city surveyor and assistant city surveyor and city surveyor.

Q. You are familiar with the wharf system of the city of New Orleans?

A. Yes, sir; I saw the first wharf built in 1834, opposite Barracks street, and from that time I have seen every wharf of the city built.

Q. Are you familiar with the wharves built under the lease of Eager, Ellerman & Co.?

A. Yes, sir.

Q. And those under the present lessees?

A. Yes, sir.

Q. Will you please state how the work done by the present lessees and the condition in which they keep the wharves compares with the work done by Eager, Ellerman & Co., in which they kept their wharves?

A. In March, 1881, the city surveyor, Brosnan, and myself made an examination of the wharves from Toledano street down to the lower limits of the city. The upper structure of the wharves in the fourth, first, and part of the second districts seemed to be very good; in front of the market, what is called the "Picayune tier," and we found the wharf quite rotten; in the third district there was no wharf in existence, but one between Mandeville street and Spain street. When the water came down in July of the same year we were then able to make a further examination of the under structure of the wharves, and found as a fact that most of the stringers were rotten and the greater part of the wharves decayed—that is to say, three wharves in the second district, which were decayed and caved in, had to be rebuilt and constructed; the Picayune tier was quite rotten, the piling, caps, and stringers rotten; in the fourth district we found the Eighth-street wharf all decayed; we found the
133 Second-street wharf decayed; we found the wharf from Washington to Sixth streets all decayed; from Washington to Second street partly decayed; in the first district all of the wharves, three-fourths of the caps and stringers were decayed; on the barge landing in the first district the wharf, which is seven hundred feet long, most of the stringers and caps were decayed; part of the steamboat landing depressed below the grade; that is all that we did find; that was the condition of the wharves.

Q. What is the condition at present of those wharves?

A. At present they are far better than they were at that time. All the wharves in the third district have been built anew.

Q. How was the work done in the rebuilding of those wharves?

A. The piles have been driven to an extra depth in the third district; they have been driven thirty-five or forty feet in the ground, so that the wharves stand now as they have been built. The wharves of 1881 went through the low water of last year and are still standing, except one, which gave way; the piles were driven to an extra depth in the ground and the wharves were braced cross-ways. In the second district they are all in good order. The "Picayune tier" has been rebuilt, caps, piles, stringers, and everything.

Q. How is that work done, compared with the work that is required by the lease?

A. It is better done than that done by Eager, Ellerman & Co.

Q. How does it compare with the work which they were required to do under the contract?

A. The work was actually done by Eager, Ellerman & Co.

Q. No; Aiken & Co. In other words, have Aiken & Co. complied with their contract?

A. Yes, sir; the contract has been complied with.

Q. Did you have anything to do with the specifications that were drawn up under the present lease?

A. Yes, sir; I drew the whole of them from the beginning to the end.

Q. Yourself?

A. Yes, sir; they were only amended and changed by the administrators a little at the time, and by the citizens' committee when called upon to give their views.

Q. Now, I understand you to state that the wharves, which stood the whole of the last season and through the low water, are good yet?

A. Yes, sir.

Q. Do you know of any other instance when such a thing occurred?

A. In the third district in 1862; from then to now they have always gone down; that is the only year from 1862 that I have known them to stand.

Q. Do you know whether anything has been done by the wharf lessees in the rebuilding of these wharves more than was required by the contract?

A. Yes, sir; they have rebuilt more than required by the contract, and it will be accounted for, because they ought to build twelve hundred and fifty squares of new wharves annually, at ($20.00) twenty dollars a square, and it will be given to them this year.

Q. How does the wharf room which is now afforded to commerce in the third district compare with the wharf room which the ships had previously?

A. We have at least fully one-third more room than before, to put it at a low figure.

Q. Can you state what wharves were rebuilt by the present lessees since they have taken possession under their lease?

A. All the wharves in the third district have been built anew, except one between Mandeville and Spain streets; that wharf had to be blocked up twice—that is to say, raised; it had sunk two or three feet, and it had to be raised. Then they had to rebuild three wharves in the second district and the whole of the Picayune tier, which is nine hundred — odd feet long, and they rebuilt the whole of the steamship wharf, excepting the piling—I speak of the upper structure—and they put in caps, new stringers, new flooring, from the ferry landing up to Saint Louis street, what we call the "Cromwell" and "Ellison" steamship wharf; they raised and rebuilt the upper structures, caps, stringers, and flooring; the whole of the barge landing, which is about 740 feet long. They rebuilt the whole of the apron of the steamboat wharf from one end to the other, and

they rebuilt the upper structure of all of the wharves in the first district. Then they rebuilt part of the steamship wharf uptown, between Jackson and St. Andrew streets, and also part of the "Old Dominion" steamship wharf, between Jackson and Phillip streets; part of the connection of the wharf from Soraparu to upper limit, which is Washington, and then they rebuilt the wharf entirely new, the piles, caps, stringers, and flooring at Jackson wharehouse, which is at First street.

134 Q. Which official in the surveyor's office had the superintendence of the work done by these lessees?

A. I was the one.

Q. You have superintended all the work done by them?

A. Yes, sir.

Q. Do you know whether any work has been done by the present lessee upon the mooring ports or clusters of the steamboat wharves?

A. Cluster ports?

Q. Yes, sir.

A. Yes, sir; all along the front of the wharves on the steamboat whaves from Girod street to St. Louis street.

Q. Has anything been done by them on the levee—that is, the land portion?

A. Yes, sir; a great deal of work.

Q. What nature?

A. Filling, covering it with hard materials, such as gravel, ballast, shells, all along the river front from Conti street to the Louisville and Nashville depot. All the levee has been shelled entirely, and on the steamboat packet landing they have put, to my knowledge, last summer a coat of fifteen inches of shells.

Q. How is the present condition of the levee compared with its former condition under Eager, Ellerman & Co.?

A. Favorable.

Q. Mr. Pilié, will you look at a sketch now shown you marked "X," and state if you made that sketch.

A. Yes, sir.

Q. What does it purport to represent?

A. It represents the wharves from La Fayette street to custom-house.

Q. To what are those wharves and levees devoted principally?

A. Steamboat landings.

Q. Are the measurements and figures upon this correct?

A. Yes, sir.

Q. You made them yourself?

A. Yes, sir; I measured them myself Sunday—four weeks ago; during the week time no one could measure it.

Q. The space marked by you "levee" in which you give the area, is that all entirely open?

A. Yes, sir.

Q. No buildings upon that?

A. No, sir; except small buildings which are offices for steam-

boats, wharfinger's, etc.—small buildings, about twelve by fifteen (12 x 15).

Q. To give them shelter from the rain?

A. Yes, sir.

By Mr. DENÉGRE: I offer this map, marked "X," in evidence; also a map of the city of New Orleans, to be produced.

By Mr. DENÉGRE:

Q. Will you state how the room, both on the wood-work and on the levee itself, as devoted to steamboats, compares with the room upon the levee and upon the wood-work devoted to steamships?

A. I cannot state just now without making the calculations.

Q. I mean, generally, is there more or less space?

A. There is more room allotted to steamboats than to any other class. To make the exact difference I could not answer without looking at my map.

By Mr. BENEDICT:

Q. Mr. Pilié, being fully posted in regard to the wharves and landings, can you state whether the ships and steamships have afforded to them any other accommodations than the wood-work itself of their wharves; does not that wood-work extend direct to the street proper?

A. The steamships?

Q. Yes, sir.

A. They are accommodated with the wood-work of the wharves only; the balance is streets; they only use the wood-work of the wharves, except opposite Jackson square on this side of the square, where they use part of the levee; that's the only place.

Q. Then the map which you have just designated and which has been offered shows that outside of the wood-work the steamboats have that amount of space as shown by you for discharging their freight?

A. Yes, sir.

Q. Being well acquainted with the city, what difference do you consider there is in the value of that vacant ground back of the steamboat wharves compared to the ground—we will say, at Jackson street, in the fourth district, and at Mandeville, in the third district?

A. The levee itself—that open space?

Q. Yes, sir.

A. That open space is at least worth ten times the value of all other levees altogether.

135 Q. Taking that steamboat landing compared with the length of the city, how does it compare as to its being near the business portion of the city?

A. A great deal more value, being right in the business portion of the city; the steamboat landing extends from Lafayette street down to St. Louis street.

Q. Which is the busiest portion of the city—where are the largest produce houses located in the city of New Orleans?

A. Right in that space between Poydras and Gravier streets.

Q. What is the principal street in the city?

A. The principal street as an avenue?

Q. The main street as a business street.

A. The main business streets are Poydras, Gravier, Canal, Custom-House, Bienville, Conti, and St. Louis streets.

Q. Which is the centre of these?

A. Canal street.

Q. That is the principal street for shopping, general business, etc.?

A. Yes, sir; that is the central street.

Q. How is Canal street situated with regard to the steamboat landing?

A. Right in the middle of the steamboat landing.

No cross-examination.

Testimony on Behalf of the Defendant Resumed this Day by Consent, at the Office of Bayne & Denegre, Esqrs., New Orleans, April 12, 1883.

Present: W. S. Benedict and George Denégre, Esqrs., for defendants; John H. Kennard and Charles S. Rice, Esqrs., for complainants.

JOHN FITZPATRICK, sworn for the defendants, says:

By Mr. BENEDICT:

Q. You are a city official?

A. Yes, sir.

Q. What position did you hold in the government under the last city charter, or previous to 1882?

A. Administrator of improvements.

Q. What position do you now hold under the new city charter?

A. Commissioner of public works.

Q. Does the attention to the wharves and landings of the city of New Orleans fall under your supervision?

A. Yes, sir.

Q. Have you been acquainted with the work done on the wharves and landings by the lessees, Joseph A. Aiken & Co., since their lease commenced?

A. Yes, sir.

Q. Have you given the matter at times your own supervision?

A. Yes, sir.

Q. Have you examined the contract of lease made by these gentlemen with the city of New Orleans?

A. Yes, sir; I was a party to its passage. I read it over carefully at the time.

Q. Did you or not, at the commencement of the lease or before it was passed, conclude, in your judgment, that it would not be to the benefit of the city to lease the wharves?

A. Yes, sir; and I objected to the lease.

Q. As you said you have seen the work being done that were done under said lease, how do you find the contractors to have complied with the engagements made by them in the lease?

A. Very well.

Q. To your satisfaction?

A. Yes, sir.

Q. By the terms of the lease it appear- that it is requisite for the contractors to make an annual report to the city through your department of their receipts and expenditures; do they do so?

A. They made it to the administrator of commerce last year, and this year they will make it to me.

Q. Has it been transferred from the office of the administrator of commerce to your department under the new charter?

A. At that time I had supervision of the wharves, but they were under the department of commerce. Now, that portion of the department of commerce pertaining to the wharves is transferred to my department as well as the supervision.

Q. Have you the original report made by the wharf lessees to the city of New Orleans?

A. It is in the hands of the city.

Q. Can you, through your office or your clerks, furnish a copy of it?

136 A. It is on file in this office, the report of the wharf lessees of all persons paying wharfage for the year ending May 29th, 1882. That report in detail was read in open council, to which body it was submitted at its meeting of July 8, 1882.

Mr. Benedict introduced in evidence a certified copy of the report of the wharf lessees as made to the city of New Orleans and now in the possession of the administrator of public works.

Mr. Kennard for complainants, objects to the introduction of said report except to prove *rem ipsam*.

ANDREW DRYSDALE, a witness produced for defendants, says:

By Mr. DENÉGRE:

Q. What is your name?

A. Andrew Drysdale.

Q. What is your occupation?

A. A stevedore.

Q. How long have you been engaged as such?

A. Twenty-seven years in New Orleans; I have been forty years in New Orleans working at cotton.

Q. You work principally at cotton as stevedore?

A. Yes, sir; discharging and loading ships.

Q. Are you acquainted with the condition of the wharves at present?

A. Yes, sir.

Q. Were you acquainted with the condition of the wharves under the former lessees?

A. Yes, sir.

Q. Will you state whether or not the wharves under the present lessees afford greater facilities for loading and unloading vessels than they previously did?

A, Yes, sir; much better.

Q. In what particular way?

A. They are stronger, and you can put more freight upon them.

Q. How many more bales of cotton can you pile on these wharves than you could on the old ones?

A. Well, we were not allowed to pile much cotton on the old wharves—in fact, it was dangerous to pile much cotton on them. The wharves in former days were not in such good order as they are now; you could not put much weight on them.

Q. How much weight can you put on the present wharves?

A. I have had a great deal of weight upon them this winter; I have had thirty-three thousand bales of cotton on the long wharf myself this winter.

Q. How many bales had you on the old wharves?

A. I do not suppose I had more than twelve hundred bales—that is, on the whole space of the wharf.

Q. Would the old wharves bear no more than twelve hundred bales?

A. I was stopped from putting more on.

Q. Have you any more wharf room now; are the wharves larger?

A. Yes, sir; that is the largest wharf we have got; that is the steamship wharf, from Jackson street to, I think, St. James street.

Q. What I want to know is whether there are any more wharves in existence under the present lease than the old lease?

A. Yes, sir.

Q. What is your opinion of the electric light: is it a help to you or not?

A. It is a help.

Q. In loading or unloading vessels?

A. Yes, sir.

By Mr. BENEDICT:

Q. Are there many steamships coming to this port now?

A. There have been a great deal this winter, but not many now.

Q. What do they take away principally?

A. Cotton, oil cake, and grain.

Q. What is the greatest quantity of freight they carried, oil cake or cotton?

A. Cotton.

Q. Is there as much cotton shipped now as before?

A. Yes, sir; I think there is — much now as ever.

Q. Is there any advantage to the city in shipping cotton from what it was?

A. There is a great advantage to the city in having the cotton on the wharves as it was this winter.

Q. How?

A. The cotton had to come out of the presses and the steamers

were not here. I had cotton on the wharf a month before the steamers came.

137 Q. How did you do this winter—putting cotton on the wharf so as to have it when the steamers arrived?

A. Yes, sir.

Q. Did you ever do it before?

A. You could not do it; there was not room enough for it.

Q. Was there any on the street?

A. It was on the batture.

Q. Would not the commissioner of public works fine you if you had it on the street?

A. I don't know; I never had it on the street; I never gave them a chance to fine me.

By Mr. DENÉGRE:

Q. Do you know whether there was any difference in the receipts of cotton by the railroads this season?

A. Only from what I hear.

Q. What is the condition of the wharves as compared with their condition under the former lessees?

A. They are in better condition.

Cross-examined by Mr. KENNARD:

Q. Do I understand you to say that from Jackson street to St. James street cannot hold more than twelve hundred bales of cotton under the old lease?

A. They would hold more than four or five times that amount between these two streets.

Q. Did you make any critical examination of the wharves before you came here to testify?

A. No, sir; I am on the wharves the whole time, but I did not make a particular investigation about that.

Q. Did you make any particular investigation under the old lease?

A. No, sir.

Q. In speaking of the wharves in your testimony you have reference to the steamship wharves, and not the steamboat wharves?

A. I am speaking of the wharves that had most of the cotton.

Q. When you were giving your testimony you referred to the steamship wharf?

A. Well, they are almost all steamship wharves now, except some wharves down [in] the third district.

Q. Are not some wharves used by the steamboats that are not used by the steamships?

A. Yes, sir; above Jackson street is generally used for sailing ships, but I have had no sailing ships during the winter, except in discharging; I load all my ships in the third district.

Q. You have reference to wharves where the ships lie?

A. The wharves in the third district are in good order now; I have got one wharf in the third district now, where I have nine

hundred bales on it, and all on the wood-work; I was there this morning.

By Mr. BENEDICT:

Q. When you speak of the wharves in olden times only holding twelve hundred bales you mean that they held it on each separate pier. The ship would land at the pier, and at the ends there would be water; the wharf would not be continuous?

A. No, sir; not in former times.

Q. How much would you put on these wharves?

A. If you could fill the distance of the wharf you could put eight hundred bales of cotton on it, if you had been allowed to do it.

Q. Who stopped you?

A. The wharfingers.

Q. Have they stopped you this year?

A. No, sir.

JOHN FITZPATRICK recalled by the defendants:

By Mr. BENEDICT:

Q. Have you, under your charge of the leased wharves, any officers who have charge of the general welfare of commerce attending to freights?

A. Yes, sir.

Q. What are they called?

A. Inspectors and clerks.

Q. Contravention clerks?

A. Yes, sir.

Q. Could you do without them?

A. No, sir.

Q. For what purpose are they put there?

A. For the purpose of distributing the freight and opening the port to commerce.

Q. Do they attend at all to the steamers—where to land and where they are to go?

A. Yes, sir.

Q. It is part of their duties?

A. Yes, sir.

Q. In the interest of the general commerce?

A. Yes; in the interest of the steamboats themselves.

138 J. T. BURDEAU, Jr., sworn on behalf of defendant, says:

By Mr. DENÉGRE:

Q. What is your occupation?

A. I am now working for J. H. Menge.

Q. Mr. Burdeau, do you know what amount of tonnage arrived in this port since Joseph A. Aiken & Co. have taken this wharf lease?

A. I know from the 28th of May, 1881, to 29th of May, 1882, that did not pay wharfage.

Q. From whence did you obtain that information?

By Mr. KENNARD: I object to the testimony on the ground that it is not the best evidence.

By Mr. DENÉGRE:

Q. From whence did you obtain your information?
A. From the Price Current.
Q. Did you make a copy of it?
A. Yes, sir.
Q. Have you got it with you?
A. Yes, sir.
Q. Is that it which you hold in your hand?
A. Yes, sir.

By Judge KENNARD:

Q. This is not the "Price Current" itself?
A. No, sir; a copy from it.

By Judge KENNARD: I object to the introduction of the copy of the Price Current, it not being the best evidence.

By Mr. DENÉGRE:

Q. Does this represent anything except the amount of tonnage arriving here which did not pay wharfage?
A. That's all.
Q. It does not represent the full amount of tonnage which arrived in the port?
A. No, sir; only the amount of tonnage which arrived and did not pay wharfage.
Q. Did you go through the files yourself?
A. Yes, sir.
Q. And you took the figures from that?
A. Yes, sir.
Q. Is this a correct statement from the Price Current?
A. Yes, sir.
Q. Made by yourself?
A. Yes, sir.
Q. Did you go through the files in the office of the Price Current?
A. Yes, sir.
Q. From whom did you obtain those files?
A. I obtained them from the ledger in which they are posted every day. When the Price Current is brought in they are posted in the ledger.
Q. You mean the original issues of the Price Current in the office of the Price Current?
A. In the office of the wharf lessees.
Q. You saw the original Price Current yourself?
A. Yes, sir.

By Mr. DENEGRE: We offer this statement in evidence, now produced, and in reference to which the witness has just testified, marked "Exhibit."

By Judge KENNARD: I renew my objection to the document.

Cross-examination by Judge KENNARD:

Q. I understand that this document offered in evidence shows the ships that arrived here and did not pay tonnage dues?

A. Yes, sir; did not pay dues.

Q. What character of shipping is that?

A. Steam vessels and sailing vessels—steamships and sailing ships.

Q. On what account were they exempt from wharfage?

A. Because they did not come to this side of the river—that is, in the spaces in which the wharf lessees have the right to collect wharfage.

Q. Does it represent shipping that did not come to the port of New Orleans?

A. That did not come to this side.

Q. What space of time does that cover?

A. From May 28th, 1881, to 29th May, 1882.

Q. What did you say was your present occupation?

A. I am with John H. Menge, solicitor; he is a wholesale grocer and ship-chandler.

Q. What connection have you with the business of the wharf lessees?

A. I formerly worked with them, up to about two months ago. I was working with them during the time referred to.

139 Q. Were you in their employ during the time covered by this document offered in evidence?

A. Not from the beginning of the time, but the books were there, and the Price Currents were there from that date, and the evidence is taken from that.

Q. When did you make up this statement?

A. I made up that statement about four months ago.

Q. At whose request?

A. By the request of the managers of the wharf lease.

Q. And the information that you obtained was derived from the Price Current?

[A.] Yes, sir, from the Price Current.

Q. Your knowledge does not go beyond that?

A. No, sir.

By Mr. BENEDICT:

Q. Do you know what the Price Current is?

A. It is a paper that has the arrival of all ships that come into port, and of clearances.

Q. What is it as a general thing?

A. Is it a newspaper for commercial circles.

Q. Newspaper printed for the commercial world?

A Yes, sir.

Q. Indicating the commerce of the city?

A. Yes, sir.

Q. It is regarded with any spirit or degree of authority?

A. Yes, sir.

Q. Is there any other paper in the city that is better regarded in relation to the shipping than the Price Current?

A. None that I know of.

Q. How long has it been in existence to your knowledge?

A. I could not tell that.

Q. As long as you remember?

A. Yes, sir.

Q. Then this statement furnished by you contains nothing except the amount of tonnage and names of vessels arriving at the port of New Orleans on the other side of the river, loading and unloading there, which do not pay wharfage to the wharf lessees on this side of the river?

A. On the other side and in the middle of the stream?

Q. It embraces as well Government vessels, which pay no wharfage under the lease?

A. No, sir.

Q. Only those arriving on the other side of the river and in the middle of the stream?

A. Yes, sir.

By Judge KENNARD:

Q. What was the date you mentioned that this statement commences?

A. On the 28th of May, 1881.

Q. What was the amount of shipping that paid no wharfage for the year running back from that date?

A. From that date back?

Q. Yes, sir.

A. I could not tell you; I don't know.

Q. What was the amount of shipping that paid no wharfage for the second year behind that?

A. I could not tell.

Q. The third year?

A. I don't remember.

Q. You have no knowledge except for this one year?

A. No, sir.

Q. Does this document contain the exact heading in the Price Current that appeared over these figures.

A. No sir; it contains everything from the first day, from the 28th of May, 1881, to the 29th of May, 1882; every vessel that arrived in this port and did not pay wharfage.

Q. You have no knowledge, then, of any other year on this subject except that one year testified to?

A. No, sir; I have not.

(Here follows table marked p. 140.)

ng Wharfage Dues to

s.	Brig				Other sources.			Total tonnage.	Total amounts.
Amount.	No. of brigs.	Tonnage.	Flat-boats.	Amount.	Wood.	Ballast.	Amount.		
	1	490	3	132 00				50464	5685 25
211 20			1	115 00				33981	4509 50
				41 00				4022	644 30
89 20	3	1188	1	174 00				10428	1816 00
860 55			2	83 00				42912	5043 86
139 00	1	182		101 00				32900	5200 85
64 40				70 00				2873	422 65
			2	126 00				12325	1778 14
480 20				52 00				31855	3981 45
133 60	1	299		70 00				34314	4836 23
				199 00				2220	533 10
			1	112 00				15547	2494 05
702 11				112 00				37375	4382 51
	1	129		81 00				24161	3266 15
				83 00				2355	437 35
467 13				40 00				15935	2593 13
557 80	2	899	1	143 00				42917	5163 16
	2	481		129 00				37574	5011 10
				58 00				22	62 40
				24 00				41822	6193 46
499 80			1	104 00				61853	7452 35
495 00				98 00				47599	6537 40
				49 00				12801	2250 25
			1	19 00				36856	5680 56
1171 00	2	838	9	254 00				70017	8616 77
564 60				110 00				46356	6506 27
734 05				69 50				9650	1841 25
363 00			1	89 00				34643	5578 27
484 15	3	804	24	485 00				75907	9290 15
676 47			4	161 00				44448	6318 22
733 35	1	397		18 50				7649	1409 75
394 40			3	154 00				18446	2979 26
1027 15				124 00				75386	9727 25
108 60			27	411 00				30776	4270 05
393 40				35 00				7424	1246 95
662 00			1	99 00				29029	4747 70
850 85	5	1576	4	177 00				75049	9401 69
337 13	1	295	14	259 00				45096	6135 33
605 33				21 00				11527	1949 68
979 27	1	207	1	153 00				28689	7248 76
839 71			2	187 00				55474	4950 90
205 80	1	145	2	120 00				35981	1601 30
322 20				78 00				9000	2913 06
435 60	1	198	1	182 00				15803	6931 45
620 80			5	259 00				52862	4932 70
				140 00				36564	954 47
443 07				72 00				5650	2587 17
672 87			2	240 00				14387	4560 68
							666 81		666 81
18225 79	26	8126	113	6113 00			666 81	1471924	203341 08

ct "A," is

STATE

Bek, book-keeper and cashier of Jos. A. Aiken & Co., wharf lessees, of their receipts during the year ending May 29th, 1882, inclusiv

W. H. McCHESNEY.

e.

Sw

SAM'L FLOWER, *Notary Public.*

141

DEPARTMENT OF PUBLIC WORKS,
ROOM NO. 18, CITY HALL,
NEW ORLEANS, *April 20th*, 1883.

I hereby certify that the accompanying documents, designated as "Abstract A," being a report or "general summary and description of all tonnage paying wharfage dues to Joseph A. Aiken & Co., lessees of wharves and landings, for the year ending May 29th, 1882," and the amount of revenue derived therefrom; and of "Abstract B," being a statement of the expenditures of said lessees of wharves and landings for year ending May 29, 1882, to be true and correct copies from the original now on file in this office.

That said reports were read at [a] meeting of city council of date July 18th, 1882, and the same are now on file, as of record, in this office.

GEO. W. FLYNN,
Chief Clerk.

"ABSTRACT B."

Expenditures, Jos. A. Aiken & Co., Wharf Lessees.

From May 29th, 1881, to May 29th, 1882, inclusive:

First district	$66,626 14
Second district	32,217 01
Third district	42,201 84
Fourth district	29,818 88
Revetment, 3rd district	28,435 12
City New Orleans, police	40,000 00
Electric light, plant	40,000 00
Electric light, house	3,500 00
	$282,798 99

STATE OF LOUISIANA, *Parish of Orleans:*

Before me, Samuel Flower, a notary public for said parish and State, personally appeared W. H. McChesney, book-keeper and cashier of J. A. Aiken & Co., wharf lessees, who, being duly sworn, deposes and says that the foregoing "Abstract B" of expenditures as therein stated is true and correct.

(Signed) W. H. McCHESNEY.

Sworn to and subscribed before me, at the city of New Orleans, this 27th day of June, 1882.

(Signed) SAM. FLOWER,
Notary Public.

Charles K. Burdeau, of the firm of J. A. Aiken & Co., wharf lessees, being duly sworn, deposes and says the foregoing account, marked "Abstract B," is correct.

(Signed) CHARLES K. BURDEAU.

Sworn to and subscribed before me this 27th day of June, 1882.

[L. S.] (Signed) SAM. FLOWER,
Notary Public.

142 *The Summary of Vessels Not Paying Wharfage Dues Arriving at the Port of New Orleans from May 29th, 1881, to May 29th, 1882.*

Name.	Tonnage.	Steamships.	Sail vessels.	Amounts.
Hutchinson	1435	1	------	$215 25
Whitney	1338	1	------	200 70
Algiers	2287	1	------	343 05
Altonower	2476	1	------	371 40
Sirocco	2069	1	------	310 35
Ben Venue	1515	1	------	227 25
Bedouin	1967	1	------	295 05
Clinton	1187	1	------	178 05
Chalmette	2893	1	------	433 95
Gussie	998	1	------	149 70
Lena	1732	1	------	259 80
Lady Lycett	1833	1	------	274 95
Motka	1586	1	------	237 90
Maria Louise	1976	1	------	296 40
Rotheray	2110	1	------	316 50
W. G. Hewes	1118	1	------	167 70
Woodburn	1788	1	------	268 20
Ship Bertraux	1057	------	1	158 55
Addie H. Claren	673	------	1	134 60
Carrie Delap	1148	------	1	172 20
Champion	799	------	1	159 80
Carrier Dove	1064	------	1	159 60
Ceder Croft	1128	------	1	169 20
Mary Jane	646	------	1	129 80
St. Pathric	726	------	1	145 20
St. Andrews	808	------	1	161 60
Wm. Gorden	791	------	1	158 20
Mariner	1443	1	------	216 45
Ben Moore	1363	1	------	204 45
Morgan City	2271	1	------	340 65
Ettie	500	------	1	100 00
J. C. Robertson	1093	------	1	163 95
Karnack	919	------	1	183 80
Regent	2354	1	------	353 10
Cid	1513	1	------	226 95
Winston	1419	1	------	212 85
Lone Star	2255	1	------	338 25
Whitney	1338	1	------	200 70
Hutchinson	1435	1	------	215 25
Sahara	1977	1	------	296 55

The Summary of Vessels Not Paying Wharfage Dues Arriving at the Port of New Orleans from May 29th, 1881, to May 29th, 1882—Continued.

Name.	Tonnage.	Steamships.	Sail vessels.	Amounts.
Chalmette	2893	1		433 95
Fairfield	1560	1		234 00
W. G. Hewes	1118	1		167 70
Forest	786		1	157 20
Blowden	1480	1		222 00
Jno. Atwood	109		1	21 80
Gussie	998	1		149 70
Algiers	2287	1		343 05
Hutchinson	1435	1		215 25
Whitney	1338	1		200 70
Fannie M.	709		1	141 80
Lone Star	2255	1		338 25
Maple Leaf	1171		1	175 65
Pontida	615		1	123 00
Buteshire	980		1	196 00
Chalmette	2893	1		433 95
Emanuel Swedenburg	779		1	155 80
Ayrshire	1354	1		203 10
Algiers	2287	1		343 05
Statesman	1865	1		279 75
Racilia	1785	1		267 75
Oluf	357		1	71 40
J. W. Parker	1227		1	184 05
Lone Star	2255	1		338 25
Alvah	2329	1		349 35
Chalmette	2893	1		433 95
Morgan	994	1		149 10
Oneta	1047		1	157 05
Hazlehurst	903		1	180 60
Morgan City	2271	1		340 65
G. W. Ward	1426	1		213 90
Bedouin	1967	1		295 05
Wodan	1961	1		294 15
Clinton	1187	1		178 05
Lone Star	2255	1		338 25
Serafina	85		1	17 00
Chalmette	2893	1		433 95
Carrie Bailey	626		1	125 20
Ben Venue	1515	1		227 25
Eastborne	2292	1		343 80

The Summary of Vessels not Paying Wharfage Dues Arriving at the Port of New Orleans from May 29th, 1881, to May 29th, 1882—Continued.

Name.	Tonnage.	Steamships.	Sail vessels.	Amounts.
Morgan City	2271	1	------	340 65
Sirocco	2069	1	------	310 35
Algiers	2287	1	------	343 05
New York	2285	1	------	342 75
Royal Harry	510	------	1	102 00
Chalmette	2893	1	------	433 95
Sahara	1977	1	------	296 55
Morgan City	2271	1	------	340 65
Lone Star	2255	1	------	338 25
Algiers	2287	1	------	343 05
E. D. Sedbury	285	1	------	42 75
Harlan	1163	1	------	174 45
New York	2285	1	------	342 75
St. Mary	1095	1	------	164 25
Morgan City	2271	1	------	340 65
Cyanus	1635	1	------	245 25
Lone Star	2255	1	------	338 25
Enrique	2667	1	------	400 05
Aransas	1157	1	------	173 55
Algiers	2287	1	------	343 05
Whitney	1338	1	------	200 70
Chalmette	2893	1	------	433 59
W. G. Hewes	1118	1	------	167 70
New York	2285	1	------	342 75
Morgan City	2271	1	------	340 65
Lone Star	2255	1	------	338 25
Algiers	2287	1	------	343 05
Hutchinson	1435	1	------	215 25
Chalmette	2893	1	------	433 95
Gussie	998	1	------	149 70
New York	2285	1	------	342 75
John Johnson	712	------	1	142 40
Morgan City	2271	1	------	340 65
Lone Star	2255	1	------	338 25
Algiers	2287	1	------	343 05
Hutchinson	1435	1	------	215 25
143 Chalmette	2893	1	------	433 95
Clinton	1187	1	------	178 05
New York	2285	1	------	342 75
Morgan City	2271	------	1	340 65

The Summary of Vessels not Paying Wharfage Dues Arriving at the Port of New Orleans from May 29th, 1881, to May 29th, 1882—Continued.

Name.	Tonnage.	Steamships.	Sail vessels.	Amounts.
Harlan	1163	1		174 45
St. Mary	1095	1		164 25
Hutchinson	1435	1		215 25
Jos. M. Fitzpathric	212	1		42 40
Lone Star	2255	1		338 25
Ayrshire	1354	1		203 10
Vega	399		1	79 80
T. J. Cochran	231	1		34 65
Algiers	2287	1		343 05
Palo Alto	490		1	98 00
W. G. Hewes	1118	1		167 70
Chalmette	2893	1		433 95
Hutchinson	1435	1		215 25
Alfa	563		1	112 60
New York	2285	1		342 75
Lizzie Henderson	281	1		42 15
Morgan City	2271	1		340 65
Morgan	994	1		149 10
Algiers	2287	1		343 05
Hutchinson	1435	1		215 25
Chalmette	2893	1		433 95
Morgan	994	1		149 10
New York	2285	1		342 75
Morgan City	2271	1		340 65
Hutchinson	1435	1		215 25
Ranzani	1418	1		212 70
Algiers	2287	1		343 05
Morgan	994	1		149 10
Easington	1767	1		265 05
Chalmette	2893	1		433 95
Hutchinson	1435	1		215 25
Alabama	757	1		113 55
Lone Star	2255	1		338 25
Morgan	994	1		149 10
Algiers	2287	1		343 05
Hutchinson	1435	1		215 25
Chalmette	2893	1		433 95
Morgan	994	1		149 10
Hutchinson	1435	1		215 25
New York	2285	1		342 75

The Summary of Vessels not Paying Wharfage Dues Arriving at the Port of New Orleans from May 29th, 1881, to May 29th, 1882—Continued.

Name.	Tonnage.	Steamships.	Sail vessels.	Amouuts.
Oluf	357	1	------	71 40
Earl. P. Mason	238	------	1	47 60
Algiers	2287	------	1	343 05
Morgan	994	1	------	149 10
Draga D.	573	1	------	114 60
Carpoine	472	------	1	94 40
Chalmette	2893	1	------	433 95
St. Julian	1077	------	1	161 55
Hutchinson	1435	1	------	215 25
H. E. Buckman	429	------	1	85 80
Morgan	994	1	------	149 10
J. D. Robinson	471	------	1	94 20
New York	2285	1	------	342 75
Benguilla	714	------	1	142 80
Jno. Cooper	74	------	1	14 80
Charington	1823	1	------	273 45
A. J. Pettingill	452	------	1	90 40
Algiers	2287	1	------	343 05
Hutchinson	1435	1	------	215 25
Hattie G. Dixon	329	------	1	65 80
Harlan	1163	1	------	174 45
St. Mary	1095	1	------	164 25
W. J. Phillips	210	------	1	42 00
Clinton	1187	1	------	178 05
I. C. Harris	994	1	------	149 10
Chalmette	2893	------	1	433 95
Algiers	2287	1	------	343 05
Clinton	1187	1	------	178 05
Hutchinson	1435	1	------	215 25
Morgan	994	1	------	149 10
Whitney	1338	1	------	200 70
St. Mary	1095	1	------	164 65
Clinton	1187	------	1	178 05
Harlan	1163	1	------	174 45
St. Mary	1095	------	1	164 25
Clinton	1187	1	------	178 05
Whitney	1338	1	------	200 70
Morgan City	2271	1	------	340 65
Hutchinson	1435	1	------	215 25
Morgan	994	------	1	149 10

The Summary of Vessels Not Paying Wharfage Dues Arriving at the Port of New Orleans from May 29th, 1881, to May 29th, 1882—Continued.

Name.	Tonnage.	Steamships.	Sail vessels.	Amounts.
I. C. Harris	994	1		149 10
Harlan	1163	1		174 45
Gussie	998	1		149 70
St. Mary	1095	1		164 25
New York	2285	1		342 75
Clinton	1187	1		178 05
Hutchinson	1435	1		215 25
Morgan	994	1		149 10
Flacotalpan	455		1	91 00
Harlan	1163	1		174 45
Algiers	2287	1		343 05
Clinton	1187	1		178 05
Whitney	1338	1		200 70
Hutchinson	1435	1		215 25
Morgan	994	1		149 10
I. C. Harris	994	1		149 10
Harlan	1163	1		174 45
Morgan City	2271	1		340 65
Cyprus	1119		1	167 85
Prinz Fredrick Carl	1635	1		245 25
Lone Star	2255	1		338 25
Whitney	1338	1		200 70
	338512	176	46	$51,750 50

Recapitulation.

Steamships	176
Sail vessels	46
Total tonnage	338512
Total amount of wharfage dues	$51,750 50

The above is a summary of vessels not paying wharfage dues arriving at the port of New Orleans from May 29th, 1881, to May 29th, 1882.

144 *Extract from Chancery Order Book, Monday, June 5th,* 1882.

THE OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
vs.
Mrs. C. M. AIKEN, Adm'x, *et al.* } No. 9878.

Mrs. Catherine M. Aiken, widow of Joseph A. Aiken, &c.; J. H. Menge, John J. Brown, John W. Tobin, and Mary E. Aiken, wife of C. K. Burdeau, by W. S. Benedict and George Denegre, their solicitors, have this day filed their answer to the complainant's bill of complaint.

Replication. Filed June 16th, 1882.

Circuit Court of the United States for the Eastern District of La.

THE OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
et al.
vs.
Mrs. C. M. AIKEN, Adm'x, *et al.* } No. 9878.

The replication of the Ouachita & Mississippi River Packet Company, of William T. Scovill, William M. Wood, Isabella O'Pry, and of her husband, James T. O'Pry; of the succession of Mrs. M.
145 E. Bassett, of Eugene Charlet, Joseph F. Aucoin, Matthew L. Scovill, Mrs. M. I. Brinker, and of her husband, N. J. Brinker; of John Thorn, Alexander M. Halliday, Christian G. Young, Mrs. Hall, Edwin Hornbrook, T. C. Sweeney, Edgar M. Vallette, to the answer of Mrs. Catherine Aiken, administratrix, &c., John H. Menge, John J. Brown, and John W. Tobin, defendants.

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendants, for replication thereunto, say that they do and will aver, maintain, and prove the said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by these repliants, without that, that any other matter or thing in the said answer contained materially or effectually in the law to be replied unto
146 and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

(Signed) KENNARD, HOWE & PRENTISS,
CHAS. S. RICE,
Solicitors.

Extract from Chancery Order Book, June 16th, 1882.

OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
vs.
Mrs. C. M. AIKEN, Adm'x, *et al.*
No. 9878.

The complainants herein have this day filed their replication by Kennard, Howe & Prentiss and C. S. Rice, their solicitors, to the answer of Mrs. Catherine M. Aiken, John H. Menge, John J. Brown, and John W. Tobin, defendants herein.

147 *Testimony for Complainants. Filed May* 28, 1883.

U. S. Circuit Court, Fifth Judicial Circuit, Eastern District of La.
In Chancery.

OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
versus
Mrs. C. A. AIKEN, *et als.*
No. 9878.

Kennard, Howe & Prentiss and Chas. S. Rice, for complainants.

Personally came and appeared before the undersigned authority, at New Orleans, La., on the sixth day of April, A. D. 1882, the undersigned, Captain Marion N. Wood, who, being duly sworn, deposes and says:

I reside in New Orleans, La.; have done so since 1855, except during the war, when I was absent from the city. I have been engaged in the steamboat business since 1850. My present position in connection with the steamboat business is owner and master of the steamboat Silver City, and I am also a director in the Red River Packet
148 Line. I have been actively engaged since 1850 in the steamboat business. I am familiar with the rate of wharfage charges in the port of New Orleans; the present rate is ten cents per ton, hull measurement. I consider it a high rate of wharfage. I am thoroughly familiar with the accommodations afforded here by the wharves to the shipping. I have been principally engaged, since my connection with the steamboat business, in the Red river trade. In saying that I consider the rate of wharfage charges at New Orleans high I mean to say that I am satisfied that at a much less rate charged the city would receive a fair compensation for the use of the wharves and to make the necessary repairs for the same. I have looked into this matter with care, and have made calculations in regard to it based upon the amount of tonnage arriving at this port, and especially upon the basis of tonnage arriving at this port in the year 1881. I find, upon calculation, that at least three hundred thousand dollars ($300,000) would be realized by collecting the existing tax of ten cents per ton, etc., and I am fully satisfied that all the work done and agreed to be done, under the lease even, could be done for the sum of one hundred and fifty thousand dollars ($150,000); but the expense of the electric lights and of the police should not be imposed upon the shipping, as the electric light, in my opinion, is by no means essential to the shipping interests of this port, because

the loading and unloading of vessels can be, and is for the most part, done more economically by daylight, the charges for night work being double those made for day work, and there is an absolute necessity that the hands should have rest at certain stated periods, and it is better for them and cheaper for us that they should take their rest at night rather than in the daytime.

With reference to the police, I would say they render no special service to the shipping, and are of no value in guarding and watching freight; this is done at our expense. The duties of the harbor-police are duties common to the general police of the city; the benefits derived from their service are in no way peculiar to com-
149 merce. In all cases when we specially require their services, such as to quell riots, we not only do, as a matter of fact, pay them, and have always paid them, but are willing to pay them without claiming any deduction of wharfage charges, inasmuch as we are certain by this arrangement of securing better service. The tax, therefore, upon the shipping to defray the police expenses, as stipulated in the lease, is a naked burden without any benefits whatever to the shipping; the shipping interests require and receive no other protection than the common interests of all the citizens of New Orleans.

With reference to the electric lights, I consider them a useless outlay, in nowise warranted as charges against commerce to procure to the city of New Orleans a fair compensation for the use and repairing of the wharves.

With reference to the special facilities afforded steamboats at the landing assigned them, I would say that they are not of any peculiarly valuable character different from the facilities offered at other points along the levee to other classes of shipping; on the contrary, my observation is that there is more obstruction in discharging and loading freight of steamboats than of steamships and other craft.

Furthermore, the city derives a special benefit from assigning a certain portion of the levees to the use of steamboats in this: That her real estate in the rear of the levees opposite where the steamboats land and in front of that portion of the city is very much enhanced in value by reason of the said landing being set apart to steamboats, as it induces a greater concentration of people of all classes and trades at that point than at any other along the levee, and therefore there is a corresponding enhancement in the price of all such real estate.

I understand that very lately the city has sold to a street railroad company a certain portion of land just this side of the Louisville and Nashville Railroad Company's depot, at the foot of Canal street, for twenty-five thousand dollars ($25,000), which piece of land
150 at any other point than opposite said steamboat landing would not have realized half the amount.

The same thing is true of the whole alluvial land, which the city had been selling of late years, opposite the steamboat landing.

At these points there has been within the past ten or twenty years a larger formation of alluvial lands in the rear of the steamboat landing than at any other point along the levee, and the city has

received a very large compensation therefor, principally by reason of the contiguity of the said lands to the said steamboat landing.

I am satisfied that the excessive rates of wharfage charged has driven considerable shipping from the New Orleans side of the river to the opposite side, where the wharfage charges are inconsiderable.

In making my estimate as to the rate of charges and in forming the conclusion which I have expressed—that the present rate is double what is necessary—I take into consideration the entire levee front, and recognize the fact that at some points the expense of keeping in repair the levees would be greater than at others; but my estimate has been made carefully, taking into consideration all the points where extra outlay would be needed, and I am thoroughly convinced that the allowance stated by me heretofore would be a liberal one.

M. N. WOOD.

Sworn to and subscribed before me, at New Orleans, La., on the 6th day of April, A. D. 1882.

MARK BREEDEN, JR.,
Notary Public for the Parish of Orleans, La.

Personally came and appeared before the undersigned authority at New Orleans, La., on the 6th day of April, A. D. 1882, the undersigned, Captain J. E. Brou, who, being duly sworn, deposes and says:

I reside in New Orleans, La. I was raised in this city. I am secretary of the Western and Southern Steamboatmen Asso-
151 ciation. I have been steamboating for the last ten years between here and Baton Rouge, and sometimes ran in the tributaries. I have been steamboating in the capacity of captain, first clerk, and mate. I am familiar with the port charges at New Orleans. I am familiar with the manner in which the wharves are constructed

I know the rate of wharfage charges in New Orleans. They are ten cents a ton for boats making one trip a week and five cents for boats making two or more trips a week, which is a very unreasonable charge.

It is more, by one-half, in my estimation, than is necessary to pay the city of New Orleans a fair compensation for the use of her wharves.

In making this statement I don't speak at random at all, but from a very critical observation of the work that is being done and has been done for several years on the levee; and I am satisfied that the amount expended in keeping the wharves in repair does not exceed one-half of the amount collected as wharfage dues. I am satisfied that at half the rates now charged there would be realized money enough to keep the wharves in proper repair, and police and light the same. With reference to the policing and lighting the wharves, I have included them, not because it is essential to the interests of commerce, but merely as an outside matter, to show how very extravagant the present rates are. I am of the opinion that neither

the policing of the wharves nor the lighting of them by electric lights conduces to the material interests of steamboatmen at all; and, as a matter of fact, there are no special services rendered by the police to steamboatmen, their duties being the same as general police. The electric light I consider wholly unnecessary and of no pecuniary advantage to steamboatmen. It is not as profitable to work hands at night as in the day, because the rates for night work are just double those for day work. It is an exceptional case for a boat to work at night.

152 It is absolutely necessary that the hands should have rest at some time, and it is better for them, and more economical for us, to let them take their rest at night instead of in the day.

Steamboats incur at this port a heavy expense for tarpaulins and skids, the latter made necessary by the wharves not being in proper condition, dry, so that the freight could rest directly on the wharves without damage.

I consider that the advantages afforded steamboats for loading and unloading at this port are not so great as those afforded steamships, for the steamboats are frequently delayed by the crowded wharves; for instance, I recollect in my experience, as mate of the steamer City of Augusta, that we sometimes, by reason of the wharf being so crowded, were compelled to receive our up freight at a different place from where we unloaded, which involved the loss of at least an hour or an hour and [a] half in making the change from one landing to another, which would not have been necessary if the up freight could have been delivered near where we put out the down freight.

So far from the steamboat landing being a greater expense to the city of New Orleans than the average landings, I have this to say, that the city of New Orleans derives a special benefit from the fact that the steamboat landing is in front of considerable property belonging to the city, alluvial property, which has come into the market of late years, and on which the city has realized a very much enhanced price, by reason of its proximity to the steamboat landing.

The property adjacent to the steamboat landing belonging to the city demands at least three times as much in the market, per lot, as any other portion of the levee, and this is entirely due to the fact that parties seeking to purchase levee property always prefer to get as near the steamboat landing as possible, that being the point on the levee at which there is the greatest concentration of business and people to patronize all sorts of trade.

153 I have made the matter of these wharf charges a subject of special study, and have endeavored to post myself as thoroughly as possible, with reference to the whole matter, and I am convinced that a fair compensation for the use of the wharves and landings, and the keeping of the same in repair, could be realized from a wharf tax not exceeding five cents a ton.

During the year 1881 there arrived in this port 2,244 steamboats, with an aggregate tonnage of 867,423 tons, and 396 barges, with an aggregate tonnage of 163,260 tons. The tonnage of the steamships

arriving during the same year amounted to 507,595 tons; ships, 260,901 tons; barks, 509,593 tons; schooners, 32,566 tons, and brigs, 17,020 tons, making a grand total of 2,358,358 tons. The amount of wharfage taxes collected on the same would be about $302,219.55, and I am satisfied that one-half of that amount would be a fair compensation for the use of the city wharves and do all the necessary repairs thereto. I consider this a liberal estimate, and I am satisfied it could be done for less. In this estimate of wharfage collected from tonnage there is not included a great many other miscellaneous sources of revenue, such as flat-boats, luggers, laying up expenses, and others too numerous to mention.

J. E. BROU.

Sworn to and subscribed before me, at the city of New Orleans, La., on the 6th day of April, A. D. 1882.

MARK BREEDEN, JR.,
Notary Public for the Parish of Orleans, La.

Personally came and appeared before the undersigned authority, at New Orleans, La., on the sixth day of April, A. D. 1882, the undersigned, Captain Andrew J. Carter, who, being duly sworn, deposes and says:

I reside in St. Louis, Missouri; my occupation is steamboatman. I have been engaged in the steamboat business twenty-seven years, plying between St. Louis and New Orleans, and Memphis and St. Louis. I am at present master of the steamer City of New
154 Orleans. I was formerly part owner and captain of the steamer John A. Scudder, which ran between New Orleans and St. Louis some eight years. I am familiar with the wharfage charges at New Orleans, St. Louis, Cairo, Memphis, and Natchez. The rates charged at New Orleans are very largely in excess of those charged at any other port with which I have had dealings. I can speak with special accuracy by comparison between the charge made at St. Louis and New Orleans. We are charged in St. Louis twenty dollars per trip. We receive at St. Louis, on an average, a very much larger cargo than we do in New Orleans, as we put out a large portion before reaching New Orleans.

The charge in New Orleans on the steamboat City of New Orleans is ninety-two dollars and forty cents per trip. The charge at Cairo is twenty dollars and eighty cents the round trip. At Cairo we can lay as long as we please, and sometimes take on there a thousand tons of freight. At Memphis we pay forty dollars a round trip. At Natchez six dollars a round trip, and we put out more freight at Natchez than at any other way point on the river. We land at a wharf-boat at Natchez and this six dollars covers all the wharfage expense—that is, what the city charges us.

The facilities afforded us at St. Louis are greater than those at New Orleans, as we land by the side of a wharf-boat at St. Louis and receive and deliver the freight direct to and from the wharf-boat. The freight is always under cover on the wharf-boat, and we thereby escape the expense of tarpaulin hire, watching, and agents

on shore; also the expense of skidding and a large saving in labor. The total expense, even if we allow a liberal rate of interest on the amount invested in the wharf-boat, and add to that the actual charges of wharfage, is a trifle at St. Louis as compared with the charges at New Orleans. They are at least two-thirds less at St. Louis than they are here. We also save a large amount in labor at St. Louis over New Orleans in this way: In New Orleans we are very frequently compelled to carry our freight entirely beyond
155 the wood-work of the wharves and to skid it up to keep it from being damaged by the wet earth. We suffer also frequently much greater delays at New Orleans than at St. Louis, because of the difficulty in getting into the wharf at New Orleans and the crowded condition of the wharves at New Orleans when we reach them with freight.

We derive no benefits whatever from the special policing alleged to be done in New Orleans.

No police service is rendered us of a character different from that rendered any other citizen of New Orleans.

The police render us no service in watching our freight. We employ our own watchmen, and, so far as the freight is concerned, we are entirely indifferent as to the existence or the non-existence of a police force.

With reference to the electric light, I would say that it is likely to confer no substantial benefits upon our shipping, as we find it more economical to discharge and load in the daytime, and as a matter of fact do so.

The rates paid for night work are double those paid for day work, and, inasmuch as the hands are obliged to have certain rest, it is much better for them and cheaper for us that they should rest at night instead of in the day.

I consider the electric lights nothing more nor less than an extravagant luxury, with no substantial benefit to our material interests.

One great difference in the handling of freight between St. Louis and New Orleans, which difference is in favor of St. Louis, arises from this fact: That we have in St. Louis to transfer the freight received or delivered merely from the wharf-boat to the deck of our steamer, whereas in New Orleans we have to roll it a considerable distance on the wharf before reaching our gang-plank, and sometimes at New Orleans drays are prohibited from driving on
156 the planked portion of the wharf; in which case the distance we have to roll is as much as from fifty to seventy-five yards.

The space allotted steamboats at New Orleans is entirely too narrow. We sometimes are compelled to land outside of other boats or ships. For instance, yesterday and to-day we are landed at about the foot of Poydras street, and we are compelled to lay outside of a ship unloading with ice.

We have frequently found the wharf at New Orleans, on the steamboat landing, very much crowded with freight, and, by reason thereof, have been considerably delayed in discharging our cargo.

The boats landing at the wharves assigned by the lessees for

steamboats generally to land at are subject to much greater inconveniences that those boats are which land at wharves specially assigned them, as is the case with the boats belonging to the Mississipi Valley Transportation Company, inasmuch as other boats are not permitted to use the wharves, which are specially set apart for their exclusive use, and no just comparison can be made between the boats situated with reference to the wharves, as are the boats of the Mississippi Valley Transportation Company and ordinary steamboats.

The facilities afforded the general steamboat interest at St. Louis are better in almost every respect than those afforded at New Orleans.

I am fully satisfied that the rate of wharfage charges in New Orleans is very excessive, and that the amount realized from the same is far in excess of what is necessary to compensate the city of New Orleans for the use of her wharves and to keep them in proper repair, even if we admitted, what we deny, that the expenditure for police and lights is warranted—that is, can be imposed as a burden upon us.

With reference to the special advantages which the lessees claim the steamboats have, by reason of the assignment to them of the particular portion of the levee now used by the steamboats,
157 I would say that, so far from the city being justified in imposing any other extra tax on that account, that the cost to her for that assignment is less than the cost of any other assignment to any other class of shipping for this reason: That by reason of the concentration of all the steamboats on a certain given frontage of the levee there is a much larger accumulation of people, with more varied interests, engaged in all sorts of trades at that point, than at any other point along the levee, and, in consequence thereof, the vacant property of the city, of which there has been a larger amount opposite the steamboat landing than at any other point on the levee within the last ten or twenty years, has commanded a price much greater than could have been obtained had the steamboat landing been elsewhere.

The accommodations given steamboats at the wharves in New Orleans instead of being greater than that afforded other craft is decidedly less; they are subjected to more inconvenience than the other shipping. With reference to the steamboats owned in St. Louis I would say that such boats, paying a property tax on the regular tax-list of the city, are not required to pay an additional wharfage tax. Such, I understand, is not the case in New Orleans, but that in New Orleans, where steamboats are taxed on the regular tax-list of the city of New Orleans as property, they are compelled to pay the same wharfage tax as other steamboats not owned here.

A. J. CARTER.

Sworn to and subscribed before me on the 6th day of April, A. D, 1882, at New Orleans, La.

MARK BREEDEN, JR.,
Notary Public for the Parish of Orleans, La.

Personally came and appeared before the undersigned authority, at New Orleans, La., on the sixth day of April, A D. 1882, the undersigned, Captain J. L. Carter, who, being duly sworn, deposes and says:

158 I reside in Newport, Kentucky; my business is steamboating. I have been engaged in boating forty-three years. I am now in command of the steamboat U. P. Schenck, running in the Cincinnati and New Orleans trade. I am familiar with the wharfage charges in New Orleans and Cincinnati; they are higher in New Orleans than they are in Cincinnati—a difference of eight and one-half cents per ton in favor of Cincinnati, or the difference between one and one-half cents and ten cents per ton.

I am allowed to lay at Cincinnati twelve days under that charge. I have laid there twelve days and paid no extra charge until the thirteenth day. We are allowed to lay here at New Orleans five days without extra charge.

We pay five dollars a day for every day over the fifth at New Orleans.

The tonnage of my boat is 617 tons. The rate of wharfage paid at Cincinnati is one and one half cents per ton. In addition to this we pay the wharf-boat at Cincinnati, at which we frequently land, forty dollars a trip.

This forty dollars entitles us to unload our cargo on the wharf-boat, which lays immediately alongside our boat, and our freight is kept under cover and in a dry place and strictly guarded on the wharf-boat, so that we have to incur when we unload on the wharf-boat no expense for tarpaulins, skidding, and watching. Besides this, the labor of handling our freight on the wharf-boat is very much less than it would be were we loading or unloading the same cargo at the wharf in New Orleans. We pay at New Orleans on our boat a wharf tax each trip, amounting to sixty-one $\frac{70}{100}$ dollars. Besides this, we are at an expense in New Orleans of tarpaulin hire, which is thirty-five dollars a trip; skidding, which is sixteen dollars a trip, and watching, which amounts to about twenty dollars a trip. Thus, it would cost my boat for discharging and receiving a cargo at New Orleans one hundred and twelve $\frac{70}{100}$ dollars, against forty-nine $\frac{50}{100}$ dollars at Cincinnati.

159 The accommodations for loading and unloading at our wharf-boat in Cincinnati are much better than those afforded at the wharf in New Orleans in many ways; for example, in wet weather it is always under cover. We also are not compelled to roll the freight anything like so great a distance as we are in New Orleans. We sometimes have to roll it in New Orleans eight or nine hundred feet.

We pay for wharfage in Memphis twelve dollars. I don't know how long that allows us to lay there. We pay at Vicksburg ten dollars; we pay at Natchez three dollars; we pay at Louisville two dollars; I don't know that there is any limit on the time at Louisville; we sometimes lay there twelve hours.

At Evansville they charge us three dollars and twenty-five cents. I don't know anything about the time allowed to remain there.

I am satisfied, from an accurate knowledge of the wharfage charged at all the places mentioned, that the rates here are largely in excess of those paid by my boat elsewhere.

My opinion is that there must be derived from the wharfage tax in New Orleans a very large revenue outside of what is necessary to compensate the city for the use of the same and to keep the wharves in proper repair. My experience has been about as extensive as that of any one who comes to this port.

I have been coming here over forty years, and all that I have said is the result of my own personal experience and observation.

J. L. CARTER.

Sworn to and subscribed before me, at New Orleans, La., on the 6th day of April, A. D. 1882.

MARK BREEDEN, JR.,
Notary Public for the Parish of Orleans, La.

Personally came and appeared before the undersigned authority, at New Orleans, La., on the sixth day of April, A. D. 1862, the undersigned, Captain W. T. Scovell, who, being duly sworn, deposes and says:

160 I reside in New Orleans, La.; I have resided here since 1867; my occupation is steamboatman; I now have charge of the steamboat Alvin; I am master of her, and one of the owners also; she runs between New Orleans and Port Eads, and lands three times a week at the port of New Orleans; I carry principally sugar, molasses, and rice up, and provisions and supplies, and things of that kind down.

The rate of port charges made against me at New Orleans is five cents per ton. All boats making two trips and over per week pay five cents per ton; the regular rate is ten cents for boats making less than that. I land in New Orleans between Conti and St. Louis streets when we can get in there; I am delayed and incommoded very often, during the sugar-grinding season, by the wharf being crowded; we get behind time on account of it; it costs us a great deal more; the expense is much greater loading and unloading when the wharf is crowded; the earth portion of the levee where I land is frequently in very bad order—full of holes—which causes more or less damage to freight.

I consider the wharf charges that I have to pay very unreasonable; I think we pay a great deal more than is necessary to keep the wharves in repair. We are allowed to lay here five days without extra charge; if we lay here longer than five days we are charged five dollars a day for every day over the fifth; my boat pays thirty dollars and thirty cents a week when there are no extras; the charge is at the rate of fifteen cents per ton per week. I do all my loading and unloading in the daytime. The erection of electric lights on the levee is of no possible benefit to me; the same is true, to my knowledge, with reference to almost all the boats. The levee police renders no exclusive services, that I am aware of, to my boat or to any other; I don't recollect of having called for the police except to carry some passengers that I brought up to the

Charity hospital; they do no watching for me; I hire my own watchmen, therefore the expenditure of money for the
161 police is of no possible advantage to me in my business. This, I am satisfied, is the case with almost all the steamboats coming to New Orleans. We have to watch our own freight on the levee, and, in case of bad weather, to cover it with tarpaulins at our own expense. We frequently have to skid up our freight, which would not be necessary if we had a dry wharf to land on. This entails considerable expense in the course of a year. The wharf lessees assume no part of this debt. The landing between Conti and St. Louis streets, in New Orleans, is very often blocked up with sugar hauled from the railroad—sugar and molasses dumped down between the two streets—to the detriment of the steamboats. I should think three cents per ton would be an extravagant price to charge for wharfage for my boat, making three trips a week. I am satisfied that that amount, properly expended, would do all the work required for the proper accommodation of commerce.

In my opinion, any moneys expended on the police force on the levees, so far from enuring to the exclusive benefit of commerce, is of no benefit whatever, and the expenditure could be dispensed with without injuring at all the interests of steamboatmen.

With reference to the benefits expected to be conferred upon commerce at this port by the erection of electric lights on the levee, as I have said before, in my opinion, the benefits, if any, are very trifling, because it is absolutely necessary that the crews of our vessels should have certain times for rest, and it is much more economical to work them in day light than at night, because we pay for night work just double the rate per hour that we do for day work. I look upon the electric light business as a luxury, and as having no connection, except a damaging one, to the money-making side of the business of steamboats.

I am part owner of the steamboats "Martha," "Isabel," and "Daisy." I am fifty-six years old. I have devoted my entire life to the steamboat business, ever since I was grown. I consider myself well posted on the dollar-and-cent question connected with
162 steamboating, and what I have heretofore said is the result of many years' experience.

WM. T. SCOVELL.

Sworn to and subscribed before me, at New Orleans, La., on the 6th day of April, A. D. 1882.

MARK BREEDEN, JR.,
Notary Public for the Parish of Orleans, La.

Personally came and appeared before the undersigned authority, at New Orleans, La., on the 8th day of April, A. D. 1882, the undersigned, E. A. Burke, who, being duly sworn, deposes and says:

I reside at New Orleans, La. I at present occupy the position of treasurer of the State of Louisiana. I was administrator of improvements of the city of New Orleans during the years 1875 and

1876, and held this office at the time the wharf lease was effected, in the month of May, 1875, between Eager, Ellerman & Co. and the city of New Orleans.

It became my duty at that time to investigate the cost of repairing and reconstructing the wharves, and also to ascertain the receipts from the same, in order to determine as to whether it would be for the interest of the city to keep the control of the wharves, or to her advantage to lease them to other parties.

With this view I caused an accurate survey to be made by the city surveyor of all the wharves under the city's control, which said survey showed that there was, say, fourteen thousand nine hundred and eight (14,908) superficial squares of wood-word.

Wharves to the amount of fifteen hundred and eighty-two (1,582) superficial squares were required to be kept in order by the elevator, railroad companies, etc., which left thirteen thousand three hundred and twenty-six (13,326) squares to be kept in order by the city.

Since that time several of the wharves have been diverted to the use of private corporations to defray all the expenses con-
163 nected with their maintenance, and some new wharves have been constructed.

On the whole, it is my opinion that the area of the wharves drawing revenue is about the same now as it was in 1875.

In answer to a question as to the cost of maintaining the wharves for a period of five years, which is the period covered by the existing lease, I should submit the following as a fair estimate: The cost of bulkheads required to be done within two years, fifty-nine thousand five hundred dollars ($59,500); payments to the city for police and supervision, forty thousand dollars ($40,000) per year—two hundred thousand dollars ($200,000); new wharves required to be built, twenty-five thousand dollars ($25,000) yearly—one hundred and twenty-five thousand dollars ($125,000); electric light, twenty-five thousand dollars ($25,000) per year—one hundred and twenty-five thousand dollars ($125,000).

Estimating the area of the wharves at fourteen thousand (14,000) superficial squares of wood-work, and the cost of construction at twenty-two dollars ($22) per square, the total cost to rebuild anew would be three hundred and eight thousand dollars ($308,000); and estimating the wear and tear on the said wood-work at twenty (20) per cent. yearly, or sixty-one thousand six hundred dollars ($61,600) yearly, the repairs for five years would cost three hundred and eight thousand dollars ($308,000).

Estimating the revenues at two hundred and forty-one thousand dollars ($241,000) per year, or say, for five years, one million two hundred and five thousand dollars ($1,205,000), the surplus of the receipts over the expenditures for the five years would be three hundred and eighty-seven thousand five hundred dollars ($387,500).

I think a minimum estimate of the revenues would be two hundred and twenty-five thousand dollars per year ($225,000), say one million one hundred and twenty-five thousand dollars ($1,125,000) for five years; expenditures for five years, eight hundred and seven-

teen thousand five hundred dollars ($817,500); surplus of
164 receipts over expenditures, three hundred and seven thousand five hundred dollars ($307,500).

The estimate, with regard to the revenues to be received, is based upon the rates of charges fixed in the existing lease, and I estimate that any decrease in the wharfage rates, after three or four years, would be fully compensated by the increase in the amount of shipping at this port.

For full particulars and data upon which my judgment was founded in respect to the receipts and expenditures of former years and the probable cost of the present maintenance, I would refer to my remarks as administrator of improvements of this city, made to the city council of New Orleans, contained in the printed pamphlet, marked Exhibit A, paraphed by the undersigned notary for identification herewith and hereunto attached and made part of this affidavit, the caption of which pamphlet reads: "Remarks of E. A. Burke, administrator of improvements, to the city council on the subject of the lease of the wharves," and which pamphlet contains twelve and one-half printed pages.

I am satisfied that an honest and economical administration of the wharves by the city government would result in a very large decrease in the rates of wharfage, and for that reason I have always been opposed to the leasing of the wharves, regarding all leases as imposing an unfair and unnecessary burden upon the commerce of the port.

I am satisfied that at a much less rate of wharfage equal facilities could be afforded the commerce of the port.

I believe that there will be, from year to year, a large increase in the shipping of this port. The construction of the Southern Pacific and the Texas Pacific, connecting with California and bringing the grain of California to this port, must necessarily cause those great railroad corporations to add steamship lines to connect with their roads at this point. There is also a lively interest being evinced in
the trade of Mexico, South America, and the West Indies,
165 which, with the growing importance of New Orleans as a port of shipment for the Western grain, must necessarily increase its importance as a shipping port, and correspondingly swell the revenues from the wharves.

E. A. BURKE.

Sworn to and subscribed before me, at New Orleans, La., on the eighth day of April, A. D. 1882.

MARK BREEDEN, JR.,
Notary Public for the Parish of Orleans, La.

Personally came and appeared before the undersigned authority, at New Orleans, La, on the eighth day of April, A. D. 1882, the undersigned, Captain James T. O'Pry, who, being duly sworn, deposes and says:

I reside in New Orleans, La., and have done so since 1873. I am thirty-three years old. My business is steamboating. I am not run-

ning on any boat now. I am now the president of the New Orleans & Gulf Transportation Company.

The boats of this company run between New Orleans and Port Eads, making three trips a week each boat. Sometimes we have all of the boats of the company running; now have only three running. Each boat pays at New Orleans a wharfage tax of five cents per ton per trip, which amounts to fifteen cents per ton per week; and frequently we run a boat daily, in which case it amounts to thirty cents per ton per week.

I am thoroughly familiar with the whole wharf system of New Orleans and have made the subject a matter of special inspection, and I am convinced that the rate of wharfage charges in New Orleans is very excessive, and that a very large revenue must be derived therefrom over and above what is necessary to compensate the city for the use of the same and to keep the same in repair. From information received as to the rate of charges in other ports, notably Cincinnati, St. Louis, and Louisville, the charge made here
166 is entirely out of proportion, even after making a liberal allowance for the greater expense that may be incurred in construction and repairs here.

I am satisfied that the revenue derived from the present rate of wharfage in New Orleans is largely in excess of the needs for compensation and repairs, after making a liberal allowance as interest on the capital invested by the city in the construction of the wharves. In addition to the wharfage tax per trip paid by our boats we incur considerable expense for watching and for skidding up, and for tarpaulins and for an assorting clerk, whose services are made necessary very frequently by the crowded condition of the wharf with freight, and we also have to pay for labor to assist the assorting clerk.

Our boats are small. The Alvin is 202 tons; the Isabelle, 137 tons; the Martha, 101 tons; the Daisy, 24 tons.

The average extra expense over the wharfage tax proper per trip on the Alvin is at least forty dollars and on the other boats at the same rate proportioned to tonnage. In this I don't include what we pay for discharging and receiving, which would make an additional sum of about forty dollars per trip.

The services rendered our line of boats by the police force differ in no manner from the general services rendered other citizens of New Orleans. They do no watching for us. We pay for our own watching. We have never yet made a special call on the police. The money exacted from us to aid in supporting the police is without the slightest benefit to us.

The electric lights I consider of no practical advantage to us, but rather a disadvantage to my line of boats, because in landing the electric light in foggy or damp weather blinds the pilot and makes it more risky to land.

We don't need the lights for night work, as we are not in the habit of loading or unloading at night, and it is more eco-
167 nomical to load and unload in the day, because the night charges are just double those of the day.

The facilities offered by the wharves in New Orleans are not as great as those furnished at St. Louis and Cincinnati, where they use wharf-boats, the expense of which, added to that of wharfage proper, is much less than at New Orleans. The reason that I say that the facilities are not so great at New Orleans is that where wharf-boats are used the steamboats avoid the expense of tarpaulins, skidding, and watching. The difficulties of delivering freight on a wharf-boat and of receiving freight from a wharf-boat are not so great as on the wharf in New Orleans, because the average distance that such freight has to be rolled is much less on a wharf-boat, and with a wharf-boat the whole of the work is done under cover; besides, the freight is received and delivered in much better order in wet weather.

With reference to the room allowed our boats at the wharves in New Orleans, I have to say that my experience is, we are very frequently cramped, and often have to load the freight on our boat over other freight previously deposited on the wharf; otherwise we would be delayed much longer in waiting for the removal of such freight previously deposited.

Loading freight in this way entails considerable extra expense, because in carrying freight across such other freight previously on the wharf it is much more inconvenient than in rolling it on the levee itself.

The space allowed our boats is not sufficient to enable us to handle freight with proper expedition. We are frequently incommoded by freight dumped on the wharves assigned us by the city by the railroad's freight hauled and dumped thereon.

Our steamboats, and I believe it is true of all others, have no greater facilities than other kinds of shipping landing at the wharves of New Orleans.

The city of New Orleans profits largely by the enhanced
168 value of her property between the wharves occupied by the steamboats and the city proper.

A large portion of alluvial land has been formed within the past ten or twenty years opposite the steamboat landing, and sales of such land have been made by the city at more remunerative prices, by reason of the same being opposite the steamboat landing, than that which was opposite any other portion of the landing, because here there is a greater concentration of population, more people engaged in all kinds of business, and, consequently, a greater demand for vacant property.

I am satisfied that for six cents per ton ample revenue would be derived to compensate the city and make all necessary repairs, and even less, if you strike out the electric lights and police, which are by no means essential to the steamboat interest.

JAS. T. O'PRY.

Sworn to and subscribed before me, at New Orleans, La., April 8th, 1882.

MARK BREEDEN, JR.,
Notary Public for the Parish of Orleans, La.

Personally came and appeared before me, the undersigned authority, at New Orleans, La., on the tenth day of April, A. D. 1882, the undersigned, H. O'Pry, who, being duly sworn, deposes and says:

I reside in New Orleans, La., and have resided here about six years; my business is pilot. I am now a pilot on the steamboat Alvin. I have had occasion to land at the wharves in New Orleans since the establishment of electric lights on the levee. I find them a disadvantage to pilots. In approaching the levee they seem to blind a pilot; he can see nothing else but the light on the wharf; he cannot distinguish anything else but the light; that increases the difficulties of landing, instead of diminishing them, so far as pilots are concerned. I landed the steamer Alvin at this wharf last
169 night; was at the wheel when she landed here, and I found the facts to be as I have stated above, viz., that the difficulties of a pilot were decidedly increased by the electric lights.

H. O'PRY.

Sworn to and subscribed before me, at New Orleans, La., on the tenth day of April, A. D. 1882.

MARK BREEDEN, JR.
Notary Public for the Parish of Orleans, La.

Personally came and appeared before the undersigned authority, at New Orleans, La., on the 10th day of April, A. D. 1882, the undersigned, R. H. Smith, who, being duly sworn, deposes and says:

I reside in New Orleans, La.; I have resided here for thirteen years; my employment is pilot on the river. I have been piloting about thirty years; I am not on any boat at present; the last boat I was on was the steamboat Robert E. Lee, yesterday; I made four trips on her yesterday as pilot of her; she was making pleasure trips from the city down to the Story Crevasse.

On the last trip she landed at the wharf in New Orleans about seven o'clock at night.

The electric lights were along the whole length of the levee. I know they bother a pilot a good deal in landing in their way; that the glare from these lights strike a pilot in the face, and he is thus deprived of the use which is ordinarily made of the lights which the boat herself carries, which lights are so placed as to reflect upon the wharf, having a fender to protect the pilot from the glare of the same, and he sees much more clearly the objects on the wharf by the aid of such lights as are carried by the boats when the wharf is dark than when the illumination of the wharf is equal to, or in excess of, that which would occur when the boat comes immediately into the wharf by the aid of her lamps.

170 I was bothered last night in approaching the wharf by the electric lights.

So far as piloting boats are concerned, I consider the electric light instead of being a benefit a decided detriment in coming into port, in making a landing.

So far as the pilots are concerned, the steamboats would do better

to spend their money in removing the electric lights from the levee than in putting them on there.

I have run as a pilot from here to St. Louis, and I know as a matter of fact that the charges for wharfage here are largely in excess of what they charge at St. Louis or at any other place that I have been; larger here than they are at St. Louis, Memphis, Cairo, Natchez, or Vicksburg.

I know the charges here are very extravagant, largely in excess of the charges necessary to give the city a fair compensation for the use of her wharves, and to keep them in proper repair.

R. H. SMITH.

Sworn to and subscribed before me, at New Orleans, La., on the tenth day of April, A. D. 1882.

MARK BREEDEN, JR.
Notary Public for the Parish of Orleans, La.

Personally came and appeared before the undersigned authority, at New Orleans, La., on the tenth day of April, A. D. 1882, the undersigned, Captain F. A. Blanks, who, being duly sworn, deposes and says:

I reside in New Orleans, La.; I have been living here since 1867; my occupation is steamboatman. I am now president of the Ouachita and Mississippi River Packet Company. I am one of the complainants in the bill filed in this suit. I am also president of the Ouachita Consolidated Line. In my connection with the business of steamboats I have commanded the steamboats Vicksburg, Tallaquah, Ouachita, Belle, Idaho, John H. Hanna, John
171 Wilson, Fred. A. Blanks, H. Hanna Blanks, and others. I have been engaged principally in the Ouachita trade. I have been making weekly trips to and from the ports of New Orleans, Monroe, Trenton, and Ouachita City.

I am thoroughly familiar with the rates of wharfage existing at the port of New Orleans.

I have made it the subject of special investigation to a certain extent. I know what the rates are under the present lease between the city and Mrs. Aiken and others. For steamboats making one landing per week it is ten cents per ton. We are allowed to lay here five days; after that we are charged five dollars a day.

I have never made an exact estimate to ascertain what would be the total receipts by the present lessees at the present rates of wharfage, but I am reasonably certain that they will not be less than three hundred thousand dollars a year. I am equally satisfied that that amount is very largely in excess of what is necessary to give a fair compensation to the city for the use of her wharves and to keep them in repair.

I have no accurate personal knowledge of how New Orleans compares with other cities in point of wharf charges; but from information received from reliable sources I am convinced that the said charges are very largely in excess of those made at any other port in the United States, and are a very much heavier burden on com-

merce than is required. I don't think it would take over one hundred and twenty-five or one hundred and fifty thousand dollars at the most to keep these wharves in New Orleans in repair.

I was well acquainted with the late Captain Jos. A. Aiken, who was the original party on the one part to the present lease with the city. I knew him well for ten or twelve years. I was thrown — with him as a member of the Steamboat Captains' Association. I was president of the Ouachita Transportation Company at the time he was president of the Red River Transportation Company. I had several conversations with him with reference to wharf charges
172 previous to the granting of this lease by the city to him and others, and I have heard him express himself in the bitterest kind of terms with reference to the extravagant charges made by the city of New Orleans for wharfage, and have heard him declare that five cents a ton would be sufficient to keep up the repair and pay the city a fair compensation for the use of the wharves. I have heard him make this assertion several times.

He was president of the Captains' Association, and he was also chairman of the committee of the Captains' Association, which committee was appointed by the Captains' Association to meet the several other committees that had been appointed by other commercial bodies in New Orleans on this subject, namely, the Cotton Exchange, the Chamber of Commerce, the Produce Exchange, and, I think, the ship-masters, through their agents, were also represented and certain railroads, I believe. These committees conferred together with a view of recommending rates of wharfage that were proper to be stipulated for in the lease. After the conference had been held between these parties, of which the one that Captain Aiken was president constituted a part, he stated to me that the various committees had agreed to recommend as a compromise six cents per ton. Captain Aiken told me that he wanted five, and the six cents was accepted as a compromise.

This conversation was prior to the time that the city entered into the contract which now exists, and to which Captain Aiken was the principal party on one side.

There is an expense connected with the present lease of forty thousand dollars per annum to keep up the electric lights and to support the alleged wharf police and to pay the salaries of wharfinger, contravention clerks, survey officers, and other employees of the levee in connection with the department of commerce.

My opinion is that the electric lights are not at all essential to the shipping interests of this port.
173 The benefits to be derived from them will not justify the imposition of any tax on commerce so far as the steamboats are concerned.

With reference to the police, I would say that there are no peculiar services rendered the shipping by the police different from the services rendered by them to other citizens of New Orleans. So far as the watching of our own freight is concerned, we bear the expense of that entirely independent of the police of the city. We are also

obliged at times to incur considerable expense for tarpaulins and skidding.

I am familiar with the facilities offered steamboats at Cincinnati for loading and unloading their cargoes; I am satisfied that they are greater than those offered in New Orleans. I understand the wharf charges are much less at Cincinnati than they are here; they there escape the extra charges which we incur here for tarpaulins, dunnage, and watching; they also have a great advantage there in not being compelled to roll their freight so great a distance in putting it on and putting off the boats.

The steamboat the Fred A. Banks, one of the boats belonging to our line, whose tonnage is about 800 tons, pays here eighty-odd dollars wharfage; besides, we are here at the extra expense, as aforesaid, for tarpaulins, watching, and skidding.

All the boats in the line of which I am the president pay wharfage at the same rates per ton, which rates I regard as exorbitant and an unnecessary tax on commerce.

F. A. BLANKS.

Sworn to and subscribed before me, at New Orleans, La., on the 10th day of April, A. D. 1882.

MARK BREEDEN, JR.,
Notary Public for the Parish of Orleans, La.

Personally came and appeared before the undersigned authority, at New Orleans, La., on the eleventh day of April, A. D. 1882, the undersigned, Captain A. Dugas, who, being duly sworn, deposes and says:

174 I reside in New Orleans, La.; I have resided here about forty years; my occupation is steamboatman; I am a steamboat captain. I have been captain of seventy boats; I am now captain of the steamboat Assumption, plying between New Orleans and Thibodeaux, on Bayou Lafourche. I have been forty-two years in the steamboat business, since 1839.

I landed my boat at the wharf at New Orleans last night for the first time since the establishment of the electric lights on the levee here. I found them to be a disadvantage in landing. They blind the pilot. My boat was up on the wharf before we knew it—before we could see anything. Before the electric lights were there I did not find this difficulty. I consider the electric lights a disadvantage decidedly, independent of the question of expense. From what I can learn, the rates of wharfage here are higher than anywhere else.

I am satisfied they are higher here than there is any necessity for. I am satisfied there is more money made out of steamboats for wharfage here than is necessary to keep up the wharves and to compensate the city for the use of the same.

The police are of no service to my boat in watching freight. I have to pay regular watchmen for that, and we have to pay extra for tarpaulins also.

A. DUGAS.

Sworn to and subscribed before me, at New Orleans, La., on the 11th day of April, A. D. 1882.

MARK BREEDEN, JR.,
Notary Public for the Parish of Orleans, La.

Personally came and appeared before the undersigned authority, at New Orleans, La., on the fifth day of April, A. D. 1882, the undersigned, Captain O. P. Shinkle, who, being duly sworn, deposes and says:

I reside in Covington, Ky.; my occupation is steamboatman.
175 I am at present captain of the steamer Golden Rule. I have been a steamboatman for about thirty-one years. I have been engaged in the trade between New Orleans and Cincinnati for about twelve years. I am thoroughly familiar with the rate of wharfage charges in New Orleans and Cincinnati, so far as my steamboat is concerned. They are very much higher in New Orleans than they are in Cincinnati and than they are at other points on the river. The rate per ton in New Orleans is ten cents, in Cincinnati it is one and one-half cents. The charge at Cincinnati entitles me to lay at Cincinnati nine days, while I am only entitled to lay here five days; if I lay here over five days I am charged five dollars a day for every day over the fifth. The last time I was in Cincinnati I laid at the wharf at Cincinnati four days, I think it was, and then I went across the river to Covington, and I lay there fifteen days and then returned to Cincinnati to get my load, and was charged no extra wharfage at Cincinnati. At New Orleans I would have been charged extra wharfage if I had done this. The facilities for handling freight in Cincinnati are greater than they are in New Orleans, because in Cincinnati we have wharf-boats. The city of Cincinnati charges no wharfage on the wharf-boats. The company that I belong to owns the wharf-boat at which I load and unload. The city of Cincinnati makes no charge for the same. We escape a great many expenses in Cincinnati, by reason of these wharf-boats, which we incur in New Orleans, such as skiddage, tarpaulins, and weighing, and the extra expenses incident to employing in New Orleans a discharging clerk. I am satisfied that to unload my vessel, the tonnage of which is thirteen hundred tons, at the wharf in New Orleans, would cost me, the freight being identical, four or five times as much, in the nature of wharf charges, as it would cost me to unload her in Cincinnati. The protection afforded to our freight in Cincinnati is far greater that that afforded at New Orleans, by reason of such freight being, at Cincinnati, always under cover. We can load and unload more rapidly at Cincinnati than we can at New Orleans. I am
176 familiar with the wharfage charged at Cairo, where they are a great deal less than they are in New Orleans—in fact a mere trifle there as compared with New Orleans. The facilities afforded me at Cairo are good; we land at Cairo at the wharf-boats, as at Cincinnati; the charges at Cairo are thirteen dollars for the round trip, from Cincinnati to New Orleans and return, allowing us to land going and coming. I have laid at Cairo as long as two or three days and no extra charge was made. I have sometimes been

delayed here by the crowded condition of the wharf; never in Cincinnati. One of the great advantages of a steamboat landing at a wharf-boat is the shorter distance all freight has to be carried, making the expense, as above stated, four or five times less, and enabling us always to receive and deliver freight in good order, whereas in New Orleans it frequently happens that the freight has to be rolled a considerable distance across the levee, both in receiving and delivering the freight, and it cannot be as well secured from the weather in New Orleans by the use of tarpaulins, which involves an extra expense, as by the covering of the wharf-boats. My own boat pays here forty dollars a trip for tarpaulin hire and thirteen or fourteen dollars for skiddage, which expense I don't incur at all in Cincinnati.

O. P SHINKLE.

Sworn to and subscribed before me, at New Orleans, La., on the 5th day of April, A D. 1882.

MARK BREEDEN, JR.,
Notary Public for the Parish of Orleans, La.

Testimony Taken by Consent, June 24th and July 6th, 1882, on Behalf of Complainants, at the Office of Messrs. Kennard, Howe & Prentiss, New Orleans, La.

C. A. EAGER, sworn by MARK BREEDEN, JR., notary public.

Examination-in-chief, on behalf complainants, by Messrs. KENNARD, HOWE & PRENTISS, as follows:

Q. Mr. Eager, where do you reside?

177 A. On the corner of Seventh and Coliseum.

Q. In the city of New Orleans?

A. Yes, sir.

Q. How long have you lived here?

A. About forty-five years.

Q. What is your business?

A. Well, my present business?

Q. Yes.

A. Well, I have been a contractor about twenty years—about twenty-four years, say; fifty-eight and twenty is seventy-eight; tweny-four years.

Q. Well, you are a member of the firm of Eager, Ellerman and Company?

A. Yes, sir.

Q. Is that firm still in existence?

A. In liquidation.

Q. You are a member of the firm of Eager, Ellerman & Co. in liquidation?

A. Yes, sir.

Q. What was the last business in which that firm was engaged prior to the commencement of the liquidation?

A. In the lease of the wharves.

Q. The lease of the wharves—what wharves?

A. The wharves in the city—the city wharves.

Q. From the city of New Orleans?

A. Yes, sir.

Q. When did your lease of the wharves of the city of New Orleans terminate?

A. They terminated, I think, on the 29th day of May, was it not? (Mr. Benedict replies "Yes.")

Q. What year?

A. Last year.

Q. 1881? When did that lease commence?

178 A. It commenced in June, 1875. I have a memorandum of it; it is here; it is a pretty hard thing to recollect.

Q. It is not the same one in use now? In whose name was that lease?

A. Henry Ellerman.

Q. You were a party in interest with Ellerman?

A. Yes, sir; we were partners. Henry Ellerman, James A. Lusk, C. A. Eager, and Henry H. Stanley—four.

Q. Did you take any active part in the conduct of the business connected with this lease?

A. Yes, sir.

Q. What was your special department as connected with that lease?

A. General superintendence of the office and outside—that is, so far as looking after the business in every direction. There was very little done—nothing, in fact—in which I was not consulted.

Q. At the expiration of your lease, do you know who became lessees?

A. Yes, sir.

Q. Who were they?

A. Mr. Joseph Aiken, I think. (Mr. Benedict states Joseph A. Aiken.) There was no company, so far as I know. Joseph Aiken.

Q. Is it not to your knowledge that the present lease is being executed by parties who have stipulated to do exactly what was done by the other lessees?

(Objected to by Mr. Benedict upon the ground that the respective contracts of the respective contractors indicate upon their face the work they obligated themselves to do under such contracts, and they are the best evidence.)

Judge Kennard states the question is asked merely to direct the attention of the witness to the facts in the case, without any design of varying or making anything that is not evidence.

179 By the WITNESS: That I cannot tell, what arrangements they have made.

By Judge KENNARD: Well, it don't make any difference.

A. I suppose they represent——

Q. It don't make any difference whether you answer that question to me.

A. All right.

Q. Are you familiar with the provisions of the existing lease?
A. This present lease?
Q. Yes, sir.
A. Well, I have; yes, sir.
Q. What have been your opportunities for familiarizing yourself with its provisions?
A. Well, in the experience I have had of some twenty-odd years and reading the specifications. Is that what you want to get at?
Q. Yes.
A. The specifications under which it was sold.
Q. Were you or not a bidder for the present lease?
A. No, sir.
Q. Were there not sealed proposals asked for and received by the city authorities for the present lease?
A. Yes, sir
Q. Did you or not, you or your firm, or any member thereof, make any proposals?
A. We made none.
Q. You made none?
A. No, sir.
Q. Why?
A. For the reason——

(Objected to by Mr. Benedict upon the ground that the reasons, ideas, intentions, or views of the parties connected or disconnected with this matter cannot be received as evidence under the issues presented; they are inadmissible and irrelevant.)

180 By Judge KENNARD:

Q. Did you contemplate making an offer for this lease?
A. Yes, sir.
Q. Why did you not make it?

By Mr. BENEDICT: Same objection.

By the WITNESS: For the reason that I was told that Eager, Ellerman & Co. couldn't have the lease.

By Mr. BENEDICT: Objected to as hearsay.

Mr. Bayne objects to the witness answering this question until the court decides whether he should be allowed to answer it.

Judge KENNARD states: Counsel objects and refuses to continue the examination of this witness on this question until the question is put to the court, and consequently an answer to this question is not insisted upon at this time.

Q. I understand you to say that this is not the only one of the reasons what somebody told you with reference to those terms of this lease?
A. The whole they told me was——
Q. I dont care about that; did you have any other reasons than those that were told you by other parties?

A. Yes, sir; I did.

Q. State them; I will ask the question in a different shape: Did you decline to make a bid for the lease on any grounds other than such as were suggested by other parties?

A. I have given that reason there that I heard we couldn't have the lease.

Q. I don't want you to say why you were not; I am not inquiring about what you heard; what I want to get at is this: Did you have any knowledge of the terms of that lease which prevented you from making a bid?

A. Well, I had knowledge by reading the specifications that were made—the original specifications.

181 Q. Now, you have said you didn't make a bid because somebody told you that Eager, Ellerman & Co. couldn't get the lease.

By Mr. BENEDICT: Same objection as to the question. It is based upon hearsay.

By Judge KENNARD:

Q. What I want to get at is, did you not receive——

A. Well, the reason was that I was perfectly satisfied that the whole thing was loaded up in such a way that no outside party could get it. That was my impression. I may be wrong.

By Mr. BENEDICT: Objected to as no evidence and as not responsive to the question.

By Judge KENNARD:

Q. I understand you to say that you were familiar with the requirements made by the city upon the lease?

A. Yes, sir; perfectly.

Q. You were familiar with the rates that were to be charged for wharfage?

A. Yes, sir.

Q. You knew that a certain amount had to be expended for electric lights?

A. Yes, sir.

Q. That was in the specifications?

A. That was in the specifications.

Q. You knew there was a certain amount that had to be set aside entirely for the police?

A. Yes, sir.

Q. You knew there was a certain amount that had to be set aside for the building of bulkheads?

A. Yes, sir.

Q. And there was a certain amount that had to be set aside for the rebuilding of the revetment levee?

A. Yes, sir; in the third district.

182 Q. Do you know what the rates of wharfage are under the present lease?

A. Yes, sir.

Q. What are they?

A. Well, they are the same.

Q. Well, what are the same?

A. As near as I can recollect, they are the same as they were in 1875, when we took the lease, with the exception of some reduction upon grain vessels loading again. I believe there is some change there, but it does not amount to anything.

Q. From your experience as one of the lessees of the lease which precedes the one out of which this suit has grown, I want to ask you the plump question for which you are called here. With your knowledge of the requirements of this lease, whether or not, if the lessees under this present lease were relieved from all the charges in connection with the electric lights, the police, the bulkheads, the revetment levees, the present rate of wharfage could be reduced?

A. Yes, sir.

By Mr. BENEDICT: Objected to upon the ground, first, the witness has not stated the terms and conditions of the present lease; the changes and modifications in it from pre-existing leases; the proper rate of wharfage under the present lease; the amount of tonnage coming to the port of New Orleans; and he is, therefore, incompetent, as a witness, to answer such a question. The question is improper and not based upon any sufficient foundation, and is leading in its character.

By Mr. BAYNE: And is objected to as made after the statement of the witness that the rates were lower than they were under the lease executed by him.

By Mr. BENEDICT: Counsel for defendant also objects to the answer being interpolated before the objection is taken down.

By Judge KENNARD: Counsel for complainants waive all
183 possible objections as to the time when the exception was made by the attorneys of the defendant.

Q. Now, I want you to pay attention to the question I am asking you, because it is going to be long. I will make it as short as I possibly can make it. This is a suit in the United States circuit court for the fifth judicial circuit, eastern district of Louisiana, by the Ouachita & Mississippi Packet Company against the present lessees of the wharves of New Orleans, the object of which is to enjoin the collection of the present wharfage tax, on the ground that the charges made are excessive and beyond a reasonable compensation for the facilities furnished by the city of New Orleans to commerce. It is alleged in their bill of complaint that by the ordinance under which this lease is made it is provided that the person or persons to whom shall be adjudicated the said revenues, collectible as may be provided, shall accept the wharves, landings, and levees in the condition in which the same may be on the 29th day of May, 1881, and shall repair and always keep the same in good order and condition during the whole term of their contract.

The said ordinance, and especially sections 5, 6, 7, 8, 9, 10, 11, 12, and 13 thereof, describe the manner and style of the repairs and the new work to be performed under the contract; and section

eleven provides for the building of additional wharves by the lessees at an expenditure not to exceed twenty-five thousand dollars in any one year.

Section twelve of the ordinance provides that the lessees must accept the levees in front of the city in the condition they were in on the 29th of May, 1881; to fill up the same, during the first year of their contract, so as to place the outer edge of the same at the level now established, at the level of the steamboat landing at Common street, and to grade the same from there, the outer edge, to the pavement of the street in the rear on a regular declivity.

Section thirteen also provides that the lessees are bound to
184 keep in good order and condition, during the whole term of their contract, all revetments on the outside of the levees in front of the district, the said 1st, 2d, 3d, and 4th districts; to build all new revetments; to replace those that may perish or be destroyed from any cause; to build during the first two years of the said lease a piled bulkhead in the third district, from Marigny to to Delery streets, and to keep the same always in the best order and condition during the whole term of the said contract, and to rebuild the same if destroyed, whether by decay, caving of the bank, or bed of the river, storms, or otherwise.

Section fourteen of the ordinance provides that the said lessee is bound to furnish all the necessary apparatus and light; all the necessary apparatus and light with the electric light; all the levees, landings, and wharves from Toledano street to Congress street, being the entire business river frontage of the city of New Orleans, the lamps or lights to be placed at no greater distance than two hundred and fifty feet apart, and the heighth at which the same are to be erected shall be determined by the city council, said lamps or lights to be kept lighted each and every night from sunset to sunrise, and the class, quality, and make of the said lights to be designated by the said city council.

Section 26 of the ordinance provides that the said lease or the farming of the said wharfage charges or dues are to be adjudicated to the person or persons agreeing to receive the lowest rate or rates of wharfage, and to pay annually to the city of New Orleans, in equal monthly instalments, the sum of forty thousand dollars, thirty thousand of which should be devoted to the maintenance of a harbor police for the protection of commerce along the river front of the city and the remaining ten thousand dollars to be set apart and devoted exclusively to the payment of the salaries of wharfingers, contravention clerks, signal officers, and other employees of the
levees in connection with the department of commerce of the
185 said city, and in connection with the foregoing to keep the wharves lit with the electric lights in said ordinance elsewhere provided.

Q. Have you paid careful attention to what I have read?

A. Yes, sir.

Q. Now, I wish to know if the various specifications, or any of them, were eliminated or excluded from this lease; or, in other words, if the lessees were not compelled to make the expenditures

that have been enumerated in my question; whether the present rate of wharfage, with which you are familiar, would or would not be in excess of a reasonable compensation for the use of the wharves?

By Mr. BENEDICT: Objected to by the counsel for the respondents upon the ground that it is improper to read the allegations of a bill of complaint to a witness and to ask his opinion thereon; that it is improper for a witness, upon such allegations being read, without special examination or knowledge concerning the work done or to be done, to give an answer that would merit consideration.

By Judge KENNARD:

Q. Now, you can answer my question, which is in substance this: After striking out from the contract that was to be made, and has been made, between the city of New Orleans and the present lessees the expenditure required under the specifications which I have read, my question is whether or not the present rate of wharfage is an excessive charge?

By Mr. BENEDICT: Objected to for the reasons above given.

By the WITNESS: Yes, sir; striking out the electric lights, as I understand you, for building the bulkhead in the third district, and forty thousand dollars a year for police and wharfingers. Striking this out; yes, sir.

By Judge KENNARD:

Q. From your knowledge of the expenses of keeping these wharves in repair, derived from the fact that you were one of
186 the lessees, could they be kept in proper repair, to answer the purposes of commerce, at a less rate than is charged under this lease?

A. Yes, sir.

Q. How much?

A. Well, I will tell you what can be done exactly. The wharves can be kept in proper order, better than—just as well or better than—the city ever kept them, and the levees lighted with four times the amount of light that the city ever have furnished up to until the electric light—four times that amount—with an immediate reduction, and even police the levees, with an immediate reduction of thirty-three and one-third per cent. We made that proposition at different times to the city.

Q. A reduction of thirty-three and one-third per cent?

A. Yes, sir; on everything right straight through on the rates of 1875. We made that proposition, and we had to pay one million dollars in six years, and we had a great deal of difficulty in getting the bonds. I made the proposition myself for them to take care of those bonds, less some two or three or four hundred thousand dollars, and we would make an immediate reduction of thirty-three and one-third per cent. It can be reduced, and give all the accommodation, for commerce afforded it, when there was a much larger amount than there is here now—shipping. But if you take off the

electric lights, take off the forty thousand dollars for police and wharfingers and building the bulkhead, and merely keep the caving landing in order, it can be reduced way beyond that.

Q. What would be a fair estimate?

A. I mean in the hands of private parties; I mean in the hands of men understanding what they are doing and knowing the thing exactly.

Q. What would be, in your opinion, a fair reduction of the charge?

A. I say thirty-three and a third per cent., with four times the amount of gas light on the levee that they ever have made.

187 I don't know. I cannot swear positively touching what the gas cost, but four times the amount, and to police the levee thoroughly, better than it has ever been afforded to it, or ever been used in policing the city.

Q. If I understand you, a reduction of thirty-three and one-third per cent. could be made at once, and a better police secured for the city than is provided for by the present lease now?

A. Well, it is provided for by the present lease, but it is not there.

Q. You have testified that there could be a reduction of thirty-three and one-third per cent., and a better police even with that reduction than is now?

A. Yes, sir.

Q. Now, subtracting the charge under the present lease for keeping up and for the support of the police, and not requiring the lessees to contribute a dollar of their revenues to that fund, could not the present rate of wharfage be reduced below thirty-three and one-third per cent.?

A. You mean just for the lights alone, the police alone, forty thousand dollars?

Q. Yes, sir.

A. It cannot be reduced below thirty-three and one-third per cent., provided the contract is carried out.

Q. Now, Mr. Eager, supposing that there was subtracted from the present lease all the obligations on the part of the lessees to contribute to the support of the police, to the erection and the keeping up of the electric lights, the building of the bulkhead in the third district, and the building of the revetment levee. Supposing not one dollar——

A. Revetment levees in the third district?

Q. Yes, sir. Supposing not one dollar was to be taken out of the pockets of the lessees to contribute to every one of the four

188 enumerated things, could not the present rate of wharfage be reduced below thirty-three and one-third per cent?

A. I would take it to-morrow at forty per cent.—that is, if everything was left off—only keeping the wharves in order.

Q. An objection has been made to one of your answers by the opposing counsel on the ground that you have expressed an opinion with reference to this wharf matter without having incidentally a knowledge of the expenses attending the keeping up and the

management of these wharves. State in your own way what is your knowledge.

A. I was lessee of the wharves in 1858. I have been connected with the wharves from that day to this. I am a contractor; have built up, and was lessee from 1875 to last spring, when Aiken bought the contract. I know all about it; the expenses—every dollar has passed through my hands; the keeping up of the wharves, the labor, the timber, and the machinery; everything else. I know exactly. We have paid nearly one million dollars in six years—paid for police, lights—which you can prove through Mr. Lusk.

Q. Is there any man in the state of Louisiana whose familiarity with this subject is as great as yours, unless it be your partner?

A. I don't think there is a man in Louisiana who knows as much as I do, as our concern—with the exception of Henry Ellerman, my partner; I think he knows more about it than I do; that is, as to the practical working, I mean; all the repairs, all the work, were under his charge.

Q. Then I understand you to testify that the present rate of wharfage is in excess of a reasonable compensation for the necessary expenditure of keeping the wharves in repair?

By Mr. BENEDICT: Objected to as leading.

A. Yes, sir.

By Judge KENNARD:

189 Q. Now, Mr. Eager, to save time, I would be glad to have you state in your own way, as briefly as possible, any reasons which you have leading you to the conclusion that this rate of wharfage is in excess of a reasonable compensation for repairs.

A. Well, from my own experience and the money we have paid for the privilege of the lease, the debts we have assumed, and have kept the wharves and landings in order for years, and paid these debts. Why, as a natural consequence, the dues can be reduced in the hands of competent parties.

Q. Did you, during the time of your lease or the leases of these wharves, expend any money for other purposes than repairs?

A. How do you mean?

Q. Were you obliged, under your lease, to pay any money which was not paid for actual repairs on the wharves?

A. We, of course, paid nearly one million dollars we assumed. Here it is, here—right here.

Q. Give it to the short-hand reporter.

A. We took the wharves in a perfect state of dilapidation. Under the terms of their contract—the terms of Eager, Ellerman's contract, or Henry Ellerman—we paid six hundred and eighty-two thousand dollars in redemption of wharfage bonds; eighty thousand dollars in a compromise settlement of a judgment in favor of the steamboat owners against the city of New Orleans—that we paid monthly, in cash—that eighty thousand dollars. We paid for police and lights at the rate of thirty thousand dollars a year, from June 29th, 1875,

to December 31st, 1875, and fifteen thousand dollars a year for the same purpose, from December 31st, 1876, to May 29th, 1880.

Q. If you had not been compelled to make those payments just enumerated, could you have taken the lease of the wharves at a less rate than you did?

A. I would have made a reduction of forty per cent.

Q. How do the rates under your lease correspond with the present rates?

190 A. Well, as I understand it—it is so long since I have looked at it—it is about the same thing, with the exception, as I mentioned there, upon grain vessels. There is a deduction, as near as I recollect, for the first year or two years, or three years—I have forgotten which—a reduction on that; but they are collecting now the same revenues as we collected, with the exception of this little deduction on grain.

Q. Is that exception large or small?

A. A vessel loaded with grain lays sixty days with that deduction in the charge or rate. She pays the same as any other vessel if she lays more than sixty days. It is a very minute thing; it does not amount to anything.

Q. Then, taking into consideration the reduction on grain vessels that you have referred to, is the present rate a reasonable charge or a charge in excess, leaving off the reduction they make, with reference to grain vessels?

A. Well, how do you mean a reasonable charge?

Q. You have made an exception with regard to these grain vessels. What I want to find out is if such a charge was made.

A. Well, I don't believe—I don't know; but I don't believe it amounts to one thousand dollars this year.

Q. Then it is very a insignificant affair?

A. I don't think it is much. I don't think it is much over five hundred dollars. I cannot tell, because I have not access to their books. I don't think it has amounted to one thousand dollars—probably not five hundred—a very small matter, as I said. It will depend altogether upon the time a vessel laid here. If she laid a regular sixty days out she wouldn't pay any additional—as near as I can figure it—she would pay just the same. If she staid more than sixty days she would pay so much. It amounts to about the same.

Q. At what reduction upon the present rates, if you were not called upon to contribute anything to the electric lights or to
191 the police, or to the bulkheads, or to the revetment levees, at what rate could a fair living be made out of the lease?

By Mr. BENEDICT: Objected to on the ground that the city of New Orleans, by its administrators, in administering the wharves and levees, perform an act of government, and have determined what is requisite and proper, in connection with the use of its wharves and the benefits growing therefrom of necessity to the water-craft using the same, and have determined the necessity of police and the necessity of lights and other requisites in order to make the wharves available for commerce.

By the WITNESS:

A. Forty per cent. discount on the present charges on the rates of 1875 under our lease.

Cross-examination by Mr. BENEDICT and Mr. BAYNE:

Q. Well, Mr. Eager, do you know anything of the manner in which the present wharf lease originated?

A. Yes, sir.

Q. Were you present at the meeting of the various commercial associations which framed it?

A. Only a portion of them. I was there once or twice at the city hall.

Q. Do you know anything of that lease as prepared by the commercial associations and submitted to the council, and of its having received any bids at six cents per ton for steamboats, and the rates of 1875 for other vessels?

A. Seventy-five what?

Q. Of 1875. Rates of 1875 for other vessels, and six cents per ton for steamboats. I gave it to you—that the commercial associations made?

A. Well, it was for all. It was for all other vessels.

Q. The rates, as established by the ordinance of 1875, on which the contract of Ellerman was based. Do you know whether any such bid was received?

192 A. I do not.

Q. Did you make such a bid?

A. No, sir.

Q. Why did you not make such a bid?

A. Well, for the reason that I called upon Fagan, the administrator of commerce, and asked him if any other bid would be received except covered down to this point, with all those articles in there, and he told me "No," it could not be entertained.

Q. Therefore you didn't bid?

A. I didn't bid.

Q. Now, did you bid at the subsequent proposals under the bids made by the city council, with the same terms and condition as the previous proposal, with this difference—that the rates were to be the subject of the amount of the bid?

A. Well, the whole thing I will tell you.

Q. Yes or no. Then state afterwards.

A. The specifications were entirely changed.

Q. Well, now, what is your answer?

A. I didn't bid. I will give my reasons if I am allowed to.

By Judge KENNARD: You can state your reasons.

By Mr. BENEDICT: I don't ask you for your reasons. I object to the reasons being given, as they are not asked for, called for, and if counsel for the complainants desire any such evidence it may be set forth under proper objection at the proper time.

By Judge KENNARD: Counsel for the complainants insist that the witness has an absolute right to give his reasons.

By Mr. BENEDICT: To which counsel for the defendant objects on the ground that he is seeking to elicit from the witness facts, not reasons.

By Judge KENNARD (to witness): Now, go ahead and give your reasons.

By the WITNESS: I gave it previously. I was told—Mr. Lusk, Mr. Ellerman, and myself understood——

193 By Mr. BENEDICT: I object to the understanding of any other witness than the one on the stand.

By the WITNESS: That it would not be received. To make a long story short, that we had no show. I will add a little more to it, even if I have — a right to—that it was our belief, that we believed, and I already believed——

By Mr. BENEDICT: I object to the belief of the witness.

By the WITNESS: That the whole thing was loaded up. What I mean by loaded up—let us get a different word for that—in such a way that no outside party would have a show or get it. As I talked it over——

By Mr. BENEDICT:

Q. Are you through with your reasons?

A. Well, wait till I get through. We were perfectly satisfied in our own minds that our bid would not be accepted, for the reason that I called upon Mr. Fagan at various times and made various propositions in regard to the lease—knowing a great deal more about it than he did, and knowing that I could assist him in any and every particular, upon the reduction of the levee dues—to keep the wharves and landing in order, and to furnish four times the amount of light they already had, and police them. That is about all.

Q. You are now through with your reasons?

A. Yes, sir; that is about all I have to say on the subject.

Q. Wherein do the specifications of the present lease differ from the specifications of the lease of Henry Ellerman, under which you acted from 1875 to 1881?

A. Well, I would have to refer to the lease. I have not read the lease for over a year.

Q. Then the facts of the specifications of your lease are not fresh in your mind?

A. Well not all the minutiæ.

194 Q. Do you know the amount and number of the wharves requisite to be built when the present lease went into existence?

A. This present lease; Mr. Aiken's lease?

Q. Yes, sir.

A. Yes, sir.

Q. What are they, and where were they, and what did they cost?

A. I would have to refer to my books to ascertain.

Q. Can you tell me what was the condition of the wharves in the

third district of the city of New Orleans, on the Mississippi river, on the 31st day of May, 1881?

A. They were in as good a condition as they have been for the last twenty years.

Q. It seems that from actual observation and photographic views taken, photographs taken subsequent to the 31st day of May, 1881, that there was but one wharf standing in the third district. Is that the condition in which those wharves had been for the past twenty years?

A. Yes, sir—I cannot say—wait a minute—stay a minute—during our whole—when we took possession of the wharves in the third district, in a state of dilapidation. We built them anew every year during our contract, and they invariably went into the river again.

Q. Caved in?

A. Yes, sir; and required to be built every year—that is, the great bulk of them. There may be one left when it comes down to points; I cannot recollect back six years.

Q. And yet do you know they were not caved in the river when your lease ran out?

A. No, sir; they were not caved in the river when the lease ran out.

Q. How were they—in splendid condition?

195 A. They were in better order than they were for twenty years. If they were photographed I never saw the photographs. If they were photographed it was after they had gone in the river; but it was after we surrendered our lease.

Q. Now, what was the condition of the wharves in the second district of the city at the time you surrendered your lease on the 31st May, 1881?

A. I presume they were in very good order.

Q. Do you know the fact?

A. I will tell you how I know. I think—that is, for we repaired everything; put everything in first-rate order—that we were informed of [it] by the city surveyor and the city council.

Q. Then you awaited notices from the city surveyor and the council to make the repairs?

A. No, sir; not always.

Q. What was the condition of the wharves in the first district when your lease ran out?

A. They were in as good condition as they have been for twenty-five years.

Q. What was their condition in the fourth district?

A. The same; as good as for twenty-five years.

Q. Had any of the wharves of the first, second, third, or fourth districts caved in at the time your lease terminated?

A. Had they? What is your question?

Q. Had they caved in?

A. In the first?

Q. First, second, third, and fourth.

A. That I cannot say exactly. I want to answer that question fully. The caving usually takes place at low water, or in the neigh-

borhood of low water. It is a gradual thing, at any rate. The city received the wharves from us. We made all the repairs that we were informed of by the officials—the city surveyor and the council—and turned them over.

Q. Is that all?

196 A. And there was no fault found—nothing?

Q. Is that all?

A. That is about all.

Q. What did it cost you to rebuild the wharves entirely in the third district?

A. I cannot say; I would have to examine my books. The whole cost entirely, as near as I recollect, would be eighty thousand dollars per annum throughout the whole city—in that neighborhood, as near as I recollect.

Q. What did it cost to rebuild the wharves in the second district, entirely?

A. I have not got that in my mind; I don't carry my ledger; I don't carry the books along with me.

Q. What did you pay entirely for bulkheads and revetment levees?

A. That I cannot answer, for the reason, as I say, that the whole expense would be eighty thousand dollars throughout the whole city front per annum.

Q. Were you required to spend twenty-five thousand dollars per year for new work—not repairs on the old wharves or the rebuilding of the old wharves, but entirely new work?

A. I think we were, as near as I recollect. I would have to look. I think that was so.

Q. Did you require the council, under the condition of throwing up your contract, to relieve you from the obligations assumed by you under your original contract?

A. We——

Q. Yes or no.

A. I will have to go back and think. Upon the condition of throwing up our contract?

Q. Yes, sir.

A. We asked for a modification in regard to the bonded

197 debt, which was granted by the bondholders and the city. That covers the question, I think.

Q. It was granted to you?

A. Yes, sir.

Q. How many of those bonds did you and the members of your firm individually or the firm itself hold at the time that you made that contract of lease of the wharves in 1875?

A. Well, I cannot tell you without reference to my books.

Q. How much did you pay for them?

A. Pay for those bonds?

Q. Yes, sir.

A. We had taken them at ninety cents on the dollar.

By Judge KENNARD: Objected to by counsel for the complainants as not being cross-examination and irrelevant to the issues.

By Mr. BENEDICT:

Q. How much did you pay for those bonds that your firm, or the members thereof, held at the time this contract of lease was made in 1875?

A. The bonds that we held? Am I to answer that question? The bonds that we held we had taken from the city of New Orleans for the repair of the wharves at ninety cents on the dollar.

Q. How many bonds did your firm afterwards buy up, and at what rate?

A. I don't recollect anything about it.

Q. At what rate did you buy them?

A. I don't recollect. We bought them at various rates.

Q. From what figure to what figure?

A. Well, must I answer that question?

By Judge KENNARD: Yes.

A. Well, wait a minute.

By Judge KENNARD (to the reporter). Note my objection; the same is not cross-examination and irrelevant.

A. We bought them at various times. I cannot say. I can
198 tell you the last we bought; we bought from the Whitehead estate. We bought them at seventy-five cents.

By Mr. BENEDICT:

Q. I ask you from what figure to what figure?

A. I cannot tell you that; I would have to examine my books.

Q. Did you buy as low as forty-eight cents?

A. No, sir; I don't recollect; may have bought for forty-eight cents.

Q. Have you not bought many as low as fifty and fifty-one cents?

A. Very few; may have bought a few.

Q. Have you not bought a great many as low as fifty-five cents?

A. Some; I cannot tell; I would have to refer to my books. We bought them at all sorts of prices; whenever we could get them.

Q. You have testified that you bought——

A. We bought some eighty thousand dollars from Jas. A. Gasquet. I think I paid him sixty-four cents; and from the Whitehead estate we bought some sixty-odd thousand dollars; we paid them seventy-five cents; and we bought from various other parties, which I cannot tell, unless I refer to my books; it seems to me that is our private business; I don't know that I ought to answer those questions.

Q. You have stated that six hundred and eighty-two thousand dollars of the wharf bonds were taken up by the firm of Eager, Ellerman & Co.

A. Yes, sir.

Q. That is the face value of the bonds taken up?

A. Yes, sir.

Q. Now, I want to know the exact amount paid for them; that you paid for these bonds. Can you give it?

A. I cannot give it.

Q. Can you give it at another time?

A. Well, am I compelled to give it?

199 By Judge KENNARD: I have not the slightest objection to your giving it.

A. I suppose I can, but I don't think——

By Mr. BENEDICT: Then I call for it.

Q. Now, do you know whether or not the wharves are required to be extended further in the river into deep or deeper water than they were under Eager, Ellerman & Co.'s contract by Mr. Aiken, as lessee?

A. I don't know that they were; if they were it never was done.

Q. Are you positive of that fact?

A. Well, I am not positive; I think the expenditures of the lessees would run from—they have built some wharves.

Q. Do I understand that you never built them under your contract as the specifications required them to be built?

A. Under our contract? No, sir; I never made any such assertion.

Q. Do you know that the contract of Aiken requires him to extend the wharves for steamboats and to extend the wharves for steam and sailing vessels much farther out into the river than they ever had been in order to obtain deeper water; and do you know what excess of cost that would entail upon the lessee to do so?

A. Well, I cannot tell that.

Q. Can you tell what the cost of the revetment levee in the third district, in order to keep up the wharves to be built there from caving in, would be?

A. I estimated on that revetment levee to run it down to the barracks, as near as I recollect, where there were no wharves at all. It has never been built according to the plans and specifications.

Q. I am not asking you about the revetment levee. I am asking about the bulkhead in the third district. Do you know what it would cost to build such a bulkhead as is prescribed in the specifications of the present wharf lease?

200 A. I cannot tell you now. I can estimate it when I read it through.

Q. Who of your firm had the general superintendence and active management of the building and repairs of the wharves during your lease?

A. Henry Ellerman.

Q. Who had control of the wharves from 1870 to 1875?

A. From 1870 to 1875?

Q. Yes, sir.

A. The city of New Orleans.

Q. How much money was made or lost by the city of New Orleans during that time collecting the wharfage dues upon the rates established by the 1875 ordinance?

A. I cannot tell; I have not the figures.

Q. Were you working for the city of New Orleans from 1870 to 1875, when they had control of the wharves?

A. Portion of the time.

Q. And you received payment from them in wharf bonds?
A. Yes, sir.
Q. At ninety cents on the dollar?
A. Yes, sir.

By the REPORTER: By consent of counsel the further cross-examination of this witness was postponed to July 5th, 1882.

OFFICE OF KENNARD, HOWE & PRENTISS,
NEW ORLEANS, LA., *July 6th*, 1882.

By the REPORTER: By consent of counsel the further cross-examination of Mr. C. A. Eager was postponed from July 5th, 1882, to July 6th, 1882, on which latter date his cross-examination was continued at the office of Messrs. Kennard, Howe & Prentiss, New Orleans, La., as follows:

By Mr. BENEDICT: Mr. Eager desires to make a correction in his testimony given on a former occasion.

Mr. EAGER here states:

201 By the WITNESS: Instead of this answer here, on page 50 of the testimony, taken June 24th, 1882, where I said that the wharves "were in as good condition as they have been for twenty-five years," I mean to say that they were in as good condition as they usually are, or were at that season of the year, and much better than they were when we received them.

By Mr. BENEDICT:

Q. Is that the only correction you wish made?
A. Yes, sir. There is another one: You asked me a question in regard to the bonds which I could not give you—that is, in regard to whether we bought any bonds at—you said 40 cents, I believe: I could not answer it for the reason I had to refer to my books, which I have done; if you desire it——
Q. Well, proceed.
A. Well, you will have to find it there, and refer to it (alluding to the former testimony of June 24th, 1882). We bought thirty bonds only, at forty-two cents—forty-two and a half.
Q. Did you make a statement of the number purchased and the price of each different lot purchased?
A. No.
Q. I call for that statement.
A. That is, you mean the average price at——
Q. Each different lot. You have stated that the condition of the wharves, when you left them at the end of May, 1881, was better than when you received them in 1875?
A. Yes, sir.
Q. Could they have been worse in May, 1881?
A. No.
Q. Could they have been worse than they were in May, 1881?
A. Could they have been worse?
Q. In a worse condition.

A. Yes, sir.

Q. Well, how could they have been worse?

202 A. Well, they could have been more dilapidated—in a worse condition in every way.

Q. What season of the year is it that they are generally rebuilt or repaired?

A. They are generally from July—the middle of July—till November or December, according to the amount of work to be done.

Q. Suppose they are in very bad condition when the work is started, during the low water of July, how long does such work continue?

A. Well, it can be continued up until January; I think we have done it.

Q. Did you rebuild the wharves of the third district regularly every year?

A. Nearly all.

Q. Did they cave in every year?

A. Pretty much all of them. There is one thing about the second district. You asked me the question—you asked me the question the other day—it just occurred to me now—in regard to the second district; the ship wharves in the second district generally cave, but not the steamship wharves.

Q. What was the condition of the wharves in the years 1866 and 1867?

A. 1866 and 1867? Well, as near as I recollect, the wharves were—1866 and 1867—they were rebuilt pretty much, and in good order.

Q. Were they not rebuilt under the supervision of the city surveyor at an expense of eight hundred thousand dollars?

A. I don't know what the expense was.

Q. It was very heavy, was it not?

A. I have forgotten; it is too long ago; I didn't keep the account.

203 Q. Didn't your firm have the contracts for the work to be done in 1866 and 1867?

A. I think we did, for a portion of it.

Q. Yes, sir. Did you, after the expiration of the first year of your lease, send a memorial to the city hall stating that unless you were granted an extra year's lease, and the wharf bonds to be purchased at not more than seventy-five cents on the dollar, that you would abandon your contract, owing to the heavy losses you had sustained the first year?

A. I don't think we did, as near as I recollect.

Q. Can you not be positive about it?

A. We, as near as I recollect——

By Judge HOWE: Allow me to suggest that the best way to get evidence in regard to the memorial would be to produce the paper. We didn't ask anything about a memorial. If you want to introduce testimony as to the contents of the memorial you had better have it produced.

By Mr. BENEDICT: We want to know if it emanated from the proper authority.

Q. Can you be positive of that?

A. Well, I don't recollect that it was worded that way at all. Of course, I haven't it before me.

Q. You did send a memorial?

A. Well, the bondholders——

Q. Did your firm send a memorial to the city hall complaining at that time, in substance, as to what I have stated?

A. That we would abandon? I don't think we did, as near as I recollect. If we did I have forgotten it. I know we called upon the mayor and made a proposition.

Q. Now, do you remember whether that proposition was in writing?

A. I have forgotten.

204 Q. Do you know whether the city granted the relief that you requested?

A. A portion of it; the city and the bondholders.

Q. You have stated, in your direct examination, that you would take the lease of the wharves at forty per cent. reduction on the present prices, if the amount of the police, wharfingers, electric lights, and revetments in the third district were stricken out of the contract. Do you base your calculation upon the receipts of Eager, Ellerman & Co. during the six years of their lease?

A. Yes, sir.

Q. Now, what was the amount of your receipts for wharfage during the lease of Eager, Ellerman & Co.?

A. Well, that is down there, I think; I cannot tell you now.

Q. Can you make a statement of their receipts?

A. Yes, sir.

Q. I call for the statement.

A. I could have brought it here with me if I had known it—of such receipts during the lease.

By Judge HOWE: Is it understood that Mr. Eager shall make out a statement and annex it?

By Mr. BENEDICT: Yes.

By the WITNESS: Of course, that is the whole receipts?

By Mr. BENEDICT: Each different year.

Q. Do you know what the receipts of the present wharf lessees were for the first year of their lease, ending 29th May, 1882?

A. I cannot tell.

Q. Do you know the amount of the expenditures made by them during those first twelve months of their lease for new work, repairs, revetment levees, electric lights, police, and all other items required under the lease?

A. No, sir; I know what they should have been.

Q. Do you know anything of the present condition of the wharves?

205 A. I have not looked at them, sir, for some months.

Q. Do you know that the wharves of the third district were entirely rebuilt by the present wharf lessees last summer and fall?

A. I think there was one wharf standing in the third district; one or perhaps two; I have forgotten. There was one.

Q. Well, the rest were built?

A. Yes, sir.

Q. Do you know that the wharf room for vessels has been largely increased by the erection of additional wharves?

A. No, sir.

Q. Do you know whether it has not?

A. It has been—steamship wharves, I believe, I understand, or rather, Pacific railroad wharves and some of the steamship wharves.

Q. There have been new steamship wharves built, additional ones to what were there before?

A. I believe where there were ship wharves, I think they have made steamship wharves—taken away the ship wharves. I don't know that there is more wharf surface than there has been for years.

Q. Have you made any examination to ascertain that fact?

A. Not particularly; no more than passing.

Q. Did you attend any of the meetings of the various commercial corporations and associations which drew up the project of the present wharf lease?

A. No, sir.

Q. Were you aware of those meetings being held?

A. Yes, sir; I was at the city hall on one or two occasions when they had a meeting. I say I was at the city hall, in the mayor's parlor, on one or two occasions; once; I may have been twice. I don't know; it was a short time.

Q. Was Mr. Ellerman, your partner, present at those meetings generally or Mr. Lusk?

206 A. I hardly think Mr. Ellerman was. Mr. Lusk I don't know.

Q. Was Mr. Lusk?

A. I don't know.

Q. Did you or not state to Mr. John Fitzpatrick, administrator of improvements, that you would not take the wharf lease as it at present exists if you were paid a fifty-thousand-dollar bonus, and comply with its terms and specifications?

A. I don't recollect.

Q. Do you know what the tonnage of vessels arriving at this port has been during the past twelve months?

A. No, sir.

Q. Do you know whether there has been an increase or a falling off in the tonnage?

A. I don't know, for I had no interest in it to post myself.

Q. Do you know what the wharfage dues were prior to 1865 for steamboats?

A. I don't recollect.

Q. Do you know what they were for ships or steamships prior to 1865?

A. I am under the impression they were about the same thing as they are now, but I may be mistaken.

[Q.] Don't you know that there has been a gradual decrease in the amount of wharfage dues from the time that the wharves were erected originally up to the present time?

A. How do you mean originally?

Q. Thirty, forty, fifty years ago.

A. No, sir; I don't know.

Q. Do you remember what the wharfage dues for steamboats were before the war?

A. No, sir.

Q. Were you not a wharf lessee before the war?

A. Yes, sir.

Q. Can you not tell me what the rates then were for steamboats?

207 A. I have forgotton. That was in 1858—my lease. I can easily ascertain.

Q. What amount of money was expended by your firm annually for the purpose of lighting the wharves under your contract?

A. You mean under the lease—under our last lease?

Q. Your last contract, from 1875 to 1881?

A. We paid for lighting and for wharfingers thirty thousand dollars a year for the first year, I think it was, or part of the first year. I have forgotten; I had it.

Q. And afterwards did you not get it reduced in some way?

A. Reduced to fifteen after that, for police and for lights.

Q. When you were the wharf lessee before the war how much did you pay for lighting, policing, and warfingers?

A. Previous to the war?

Q. Yes, sir.

A. We didn't pay anything.

Q. Sure?

A. We paid so much in notes payable monthly. We paid so much bonds for the wharves.

Q. That was the way the contract was then given out?

A. That was the way it was made.

Q. Then the city would——

By the REPORTER: (The reporter has "prepare;" counsel evidently meant "repair" them.)

A. As it saw fit; yes, sir.

Q. Do you know how many police were in use on the wharves when your lease expired in May, 1881?

A. I cannot say, but there were very few.

Q. Do you know how much the force has been increased to on the levee under the present wharf lease?

A. No, sir; we paid the policemen ourselves during our lease. The police there was no account. I say we had private police
208 of our own that we had to pay, for the reason that the city's police didn't attend to anything—that is, did not protect our interest.

Q. Mr. Eager, those statements that are called for, will you be kind enough to send them to Mr. Bayne's office, No. 48 Camp street?

A. Yes, sir; give me a memorandum of what you want and I will give them to you. I think I have the average of all the wharf bonds. The total amount, that is all you want?

Q. The amount paid for each lot that you bought, from time to time.

A. What do you want each lot for?

Q. Simply to have the facts in detail, that we may have it definite, because otherwise——

A. You mean the six hundred and eighty-two thousand? Now you want to know how much each lot of them cost?

Q. Each different lot you purchased, and from whom you purchased them, and when, and how much you paid for them?

A. I cannot tell always from whom I bought them, for oftentimes I may have bought through a broker and didn't know who the seller was.

Q. Then state who was the broker, and give the price, and then a statement of the receipts annually, during your lease from 1875 to 1881:

682 wharf bonds, $1,000 each, cost	$448,348 77
Average	657 40
Steamboat debt	80,000 00
Interest on wharf bonds, coupons cashed	73,250 08
Wharf expense account, police, lights, etc	93,750 00

Receipts:

Total wharf revenues for 5 years and 11 months	$1,388,500 85

NEW ORLEANS, LA., *July 12th*, 1882.

The above was given to me this day by Judge W. W. Howe as the statement furnished by Mr. C. A. Eager in answer to the call of Messrs. Bayne & Benedict, in the case of O. & M. R. P. Co. *versus* Mrs. C. A. Aiken *et als.*, now pending before U. S. circuit court, E. D. of La.

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MARK BREEDEN, JR.,
Notary and Stenographer.

Testimony Taken by Consent, on Behalf of Complainants, at the Office of Messrs. Kennard, Howe & Prentiss, New Orleans, La., Nov. 27th, 1882.

(Before the witness was sworn, Mr. Denegre, on the part of defendants, objected to the taking of this testimony on the ground that the court is without jurisdiction, the matters in this suit being questions of law and not of equity.)

HENRY ELLERMAN sworn by MARK BREEDEN, Jr., notary public.

Examined in chief on behalf of complainants by Messrs. KENNARD, HOWE & PRENTISS:

Q. Where do you live, Mr. Ellerman?

A. I live in the 6th district, corner of Peniston and Coliseum streets.

Q. In the city of New Orleans—in this city?

A. In this city.

Q. How long have you lived here?

A. I have lived here since 1844.

Q. What is your business, Mr. Ellerman?

A. Well, my business was—since 1849 or 1850 I have been on wharf work all the time.

Q. Wharf work?

A. Yes, sir; contracting and working on the wharves.

Q. Since 1849?

A. Since 1850, say.

Q. Were you a member of the firm of Eager, Ellerman & Co.?

A. Not since——

210 Q. Were you a member, I say, of the firm of Eager, Ellerman & Co.?

A. Yes, sir.

Q. At the time it was in existence? That firm is in liquidation now, is it not?

A. Yes, sir.

Q. What was the last business in which that firm was engaged prior to the commencement of the liquidation?

A. It came in liquidation since Mr. Lusk died.

Q. Prior to Mr. Lusk's death, what was that firm's business?

A. We had the lease of the wharves.

Q. The wharves of the city of New Orleans?

A. Yes, sir.

Q. From the city of New Orleans?

A. Yes, sir.

Q. When did your lease of the wharves terminate?

A. Expired?

Q. Yes, sir.

A. I believe it was the 29th of May.

Q. What year?

A. 1881.

Q. When did that lease commence?

A. I think it was in 1875.

Q. Do you remember the month?

A. I don't know; I suppose from the 1st of June or the last of May, 1875; I could not say exactly.

Q. In whose name was that lease?

A. It was in my name—Ellerman.

Q. Henry Ellerman?

A. Yes, sir.

Q. Who were your partners?

A. Mr. Eager, and Mr. Lusk, and Mr. Stanley.

Q. Henry H. Stanly?

211 A. Yes, sir; Mr. Lusk and Mr. Stanley are dead.

Q. The two are dead?

A. Yes, sir.

Q. Mr. Eager is the only surviving member besides yourself?

A. Yes, sir.

Q. Did you take any active part in the management of the business connected with the lease of the wharves?

A. Well, I superintended the wharves; it was all under my whole control.

Q. You were the superintendent?

A. Yes, sir.

Q. What were the duties of the superintendent?

A. Well, he had sometimes a good deal of men to look after, and to direct the work, and generally superintend it.

Q. Did you see that the work was properly done?

A. Yes, sir.

Q. Did you designate the kind of work that was to be done?

A. Yes, sir.

Q. The sort of material to be used?

A. Yes, sir.

Q. How did you do the work, by contract?

A. No, there was no contract there, only the lease; we had no contract.

Q. You don't understand me. The men that you employed to do the wharf work, did they work by contract—under a contract?

A. No, sir; we didn't give out any contracts, only sometimes to take up planks and put down planks, so much per square—not often—sometimes in wrecking the wharves had to take the planks up.

Q. You say that your lease terminated on the 29th of May, 1881?

A. Yes, sir; it ended.

Q. Who succeeded you as lessees of the wharves?

A. I suppose, as I understand, Mr. Joseph Aiken.

212 Q. You know that, as a matter of history, do you?

A. Well, I saw it in the papers.

Q. Well, that is a matter of history. Are you familiar with the terms of the present lease?

A. Some; yes, sir.

Q. Were you a bidder for it?

A. No, sir.

Q. Did you inspect its terms at the time it was being offered—did you make an inspection of the terms of the lease at the time the city was offering it?

A. Well, what we saw in the papers.

Q. Did you ever see the ordinance?

A. Yes, sir.

Q. Did you familiarize yourself with it?

A. No, not much; we were told that Eager, Ellerman & Co. should not have the wharves; that there was no use of them bidding, and

I can prove it by witnesses if you want it; we were told that it was no use for us to bid—that we should not have it even if we were the lowest bidders.

By Mr. BENEDICT: I object to that portion of his answer in which he says he was told, on the ground that it is hearsay and so general in its nature as not to admit—as not to be susceptible of cross-examination, and it cannot be taken as an answer to the question.

By Judge KENNARD:

Q. Have you any other reason for believing that it was useless for you to bid, except from what you heard?

A. Well, we had one reason that we didn't bid—that they overburdened the wharves, so that we would have no chance whatever. The old council was hostile to us.

By Mr. BENEDICT: Objected to for the same reasons as stated above to the last answer.

By Judge KENNARD:

Q. What were the rates of wharfage allowed under your lease?

213 By Mr. BENEDICT: Objected to. The lease speaks for itself

A. I cannot state positively.

By Judge KENNARD:

Q. You don't recollect?

A. No, sir; that is, different charges for steamboats. Some would make two or three trips a week sometimes; only five cents a ton to some of them, but more to others again; but I cannot tell how much it is.

Q. It is all down in the lease?

A. Yes, sir.

Q. Who made that lease; what notary?

A. The notary was Mr. Le Gardeur.

(Judge Kennard offers a copy of the lease in evidence, and Mr. Benedict agrees that if there is a copy of the same already in evidence that it shall be used, and that no further copy need be produced by Judge Kennard.)

Q. Your lease with the city contained provisions with regard to your buying certain outstanding wharf bonds?

A. Yes, sir.

Q. How much was that debt that you obligated yourself to pay?

A. I believe, if I am not mistaken, there was $682,000 wharf bonds, with interest. I believe the interest was 7.31. Then we had to assume the steamboat debt.

Q. How much was that?

A. $80,000. Then we had to pay, I believe, $30,000 for gas, police, and lights for one year or two years—one year or two years, I cannot tell exactly which; after that the police, light, and gas was re-

duced. I don't know whether we had to pay for two years $30,000, or pay it for only one year.

Q. It is already in evidence that you assumed to retire 682 wharf bonds, which you have already stated were $1,000 each, and the steamboat debt for $80,000, and that you paid interest on the
214 wharf bonds of $73,250.08, and wharf expenses, account of police, lights, etc., $93,750. That is the correct sum, is it?

A. Yes, sir; I suppose so.

Q. It is taken from your books, in the testimony of Mr. Eager?

A. Yes, sir.

Q. If you had not been obliged to retire that indebtedness to pay out that sum of money which your lease called for, could you have taken the lease at a lower figure than you did?

A. To pay no debt at all?

Q. Yes.

A. Oh, yes, sir.

Q. Now, I am going to ask you a long question, Mr. Ellerman, and I will get you to pay particular attention to it. I will make it as short as I possibly can. This is a suit in the United States circuit court, eastern district of Louisiana, by the Ouachita & Mississippi River Packet Company against the present lessees of the wharves of New Orleans. The object of which is to enjoin the collection of the present wharfage tax, on the ground that the charges made are excessive, and beyond a reasonable compensation for the facilities furnished by the city of New Orleans to commerce. It is alleged in the bill of complaint (this is the same thing, this is a copy of it) that under the ordinance, or by the ordinance under which this lease is made, it is provided that the person or persons to whom shall be adjudicated the said revenues, collectible as may be provided, shall accept the wharves, landings, and levees in the condition in which the same may be on the 29th day of May, 1881, and shall repair and always keep the same in good order and condition during the whole term of their contract. The said ordinance, and especially sections 5, 6, 7, 8, 9, 10, 11, 12, and 13 thereof, describe the manner and style of the repairs, and the new work to be performed under the contract, and section 11 provides for the building of additional new wharves by the lessees at an expenditure not to exceed
$25,000 in any one year. Section 12 of the ordinance pro-
215 vides that the lessees must accept the wharves in front of the city in the condition they were in on the 29th day of May, 1881; to fill up the same during the first year of their contract, so as to place the outer edge of the same at the level now established for the steamboat landing at Common street; to grade the same from there, the outer edge, to the pavement of the street in the rear on a regular declivity. Section 13 also provides that the lessees are bound to keep in good order and condition during the whole term of their contract all the revetments on the outside of the levees in front of the district—the said first, second, and third districts; to rebuild all new revetments; to replace those that may perish or be destroyed from any cause; to build during the first two years of the lease a piled bulkhead in the third district from Marigny to Delery

streets, and to keep the same always in the best order and condition during the whole term of the said contract, and to rebuild the same, if destroyed, whether by decay, caving of the banks, or the bed of the river, storms or otherwise. Section 14 of the ordinance provides that the said lessee is bound to furnish all necessary apparatus and light—all the necessary apparatus, and light with the electric light all the levees, landings, and wharves from Toledano street to Congress street, being the entire business river frontage of the city of New Orleans; the lamps or lights to be placed at no greater distance than 250 feet apart, and the height at which the same are to be erected to be determined by the city council; the said lamps or lights to be kept lighted each and every night from sunset to sunrise, and the class, quality, and make of the said lights to be designated by the said city council. Section 26 of the ordinance provides that the said lease or the farming of the said wharfage charges or dues are to be adjudicated to the person or persons agreeing to receive the lowest rate or rates of wharfage, and to pay annually to the city of New Orleans, in equal monthly instalments, the sum of $40,000, $30,000 of which shall be devotad to the maintenance of a harbor police for the protection of commerce along the river
216 front of the city and the remaining $10,000 to be set apart and devoted exclusively to the payment of the salaries of wharfingers, contravention clerks, signal officers, and other employees of the levees in connection with the department of commerce of the said city, and in connection with the foregoing to keep the wharves lit with the electric lights in the said ordinance elsewhere provided. Have you paid careful attention to what I have said?

A. Yes, sir.

Q. You understand it fully?

A. Yes, sir.

Q. Now, I wish to know if the various specifications, or any of them, which I have enumerated were excluded from this lease; that is, were taken out; or, in other words, if the lessees were not obliged to make the expenditures that have been enumerated in my question; whether the present rate of wharfage with which you are familiar would or would not be in excess of a reasonable compensation for the use of the wharves. Before answering my question I will ask you if you are familiar with the present rate of wharfage charges. You say that you are familiar with the present rates?

A. Yes, sir; about, I think it is for steamers about——

Q. I will state here; it is stated distinctly in the bill, it is also in evidence, that the lease, the ordinance under which the present lease exists, which fixes and regulates the charges for wharfage, provides that the wharfage dues on all steamboats shall be fixed as follows: Not over five days, 10 cents per ton, and each day thereafter, $5 per day; boats arriving and departing more than once in a week, 5 cents per ton each trip; boats laying up for repairs during the summer months to occupy such wharves as may not be required for shipping for 30 days or under, $1 per day. Such charges to be exigible from all steamboats landing or mooring at the wharves fur-

nished by the city of New Orleans, which said ordinance is for reference, and for greater certainty made a part of their bill, and is filed with it as an exhibit. Those are the provisions?

217 A. Yes, sir; for steamboats.

Q. Those are the wharf charges?

A. For shipping; steamships was higher.

Q. Yes, sir; there is a different clause with regard to that. Do you refer to the present lease?

A. Yes, sir.

Q. You are familiar alike with the charges for shipping? Was there the same difference in your lease? Was there a difference in your lease?

A. The difference is in grain vessels.

Q. There is a difference in the new lease—in this lease?

A. In this lease?

Q. In your lease.

A. We didn't have it.

Q. There was no difference between steamboats and ships in your lease?

A. Yes, sir; I thought you asked me if there was any difference in our lease for ships carrying grain alone.

Q. The rates which I have enumerated, which I have read to you, apply to steamboats?

A. Yes, sir.

Q. As I understand, there was a different rate; there were different rates for ships?

A. Yes, sir.

Q. Both in your lease and in this lease?

A. Yes, sir.

(Judge Kennard requested the reporter to read to the witness the last question on the preceding 20th page; but before the reporter did so Mr. Benedict objected, as it, in his opinion, involved a question of law for the court to decide, and involved no issue presented in this case upon the facts to be elicited.)

Q. I will put it in this way: If these electric lights were
218 not in the lease, and the lessees were to make no payments for harbor police, nor for revetment levees?

A. You mean the revetment levee in the lower district.

Q. Yes.

A. 15,000 feet of levee?

Q. Yes. Nor the bulkhead. If they had not to expend anything at all on them would a lower rate than is now charged be a reasonable compensation?

A. A low rate?

Q. Yes.

A. I think so.

Q. How much could they be reduced, in your opinion?

A. Well, I would take the work the former way I had it, and I would reduce it from 40 to 42½ per cent., even 45 per cent., if that $40,000 and that fifteen thousand feet of revetment levee and the

length of that bulkhead ever was taken out. They don't do it, anyhow. They contracted to extend the wharves 25 feet out into 25 feet of water, from the fourth district down to Canal street; but they don't do it. I will give you an instance. I built a wharf for the New Orleans Pacific road. The lessees had a wharf by the New Orleans Pacific road's wharf. It was from St. Mary down to Nun street. The wharf is about three hundred feet by seventy feet wide. I suppose about 260 square yards; and right adjoining there was a steamer there. I believe it was the Hohenstaufer, and the stevedore came to me and he says: "Mr. Ellerman, as you have two sticks, would you be so kind as to loan me a stick to spar the vessel off," and they had to spar her off 20 or 25 feet. It was a Bremen steamer.

Q. I understand they had to spar her off from the wharf they had repaired?

A. Yes, sir.

Q. Could not get to the wharf by 20 feet?

A. By fifteen or eighteen feet. Then when the other steamer was hauled away a French steamer was there; and the stevedore was Mr. Drysdale. Then I finished, and was going to take my timber away, and Mr. Drysdale asked me to sell him or loan him two sticks of timber to spar his steamer off. Then I asked him $11 to sell them, or $3 to loan them. I gave him the two sticks, and afterwards he paid me $11. The lessees had no timber there then.

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Q. So the wharf that you built for the Pacific railroad was further out in the river?

A. No, sir. It was all in one line, but we had no 25 feet of water, and I know several places where it is not 18 feet of water. They overburdened the wharves. If we had it they would hold us strictly responsible, and make us build them in 25 feet of water.

Q. Then you think if these items which I have enumerated were out of the lease that there could be a reduction of 42½ per cent. on the present rates?

A. Yes, sir; 42½ to 45 per cent.

Q. You were lessee for how many years?

A. Six years less a month.

Q. Are you or not familiar with the amount of tonnage that came to this port?

A. No, sir; I cannot say. I never was in the office business. I was always busy outside.

Q. You didn't make this calculation?

A. No, sir.

Q. There is a stipulation, Mr. Ellerman, in the present lease that the lessees are obliged to accept the wharves from the city in the condition in which they were on the 29th day of May, 1881?

A. Yes, sir.

Q. Which, as I understand, was the day your lease terminated?

A. Yes, sir.

Q. Please state what was the condition of the wharves at that time?

A. Well, sir, previous—24 days, or 30 days, or 35 days—we
220 had them repaired. I waited on Mr. Brosnan, the city surveyor, and Mr. Pilie, the deputy city surveyor, myself, and we went over those wharves previous—24 or 30 or 35 days, or one month, maybe—I cannot state the exact number of days—and they were in tip-top order. There was only one place, I believe—40 or 50 feet of bulkhead in the lower districts of the city. They said that had to be attended to, and I attended to it immediately. All the wharves in the second district were as level as a table only the Morgan wharf——

By Mr. BENEDICT: We object to any statements from the witness as to the condition in which the city surveyor found the wharves, and the statements made by the city surveyor on the ground that he has made an official report to the city council, which report speaks for itself.

By Judge KENNARD:

Q. Now you can go on.

A. I say the wharves were as level as a table in the second district, except the Morgan wharf, with which we had nothing to do. We did repair it once a little.

Q. You were not called upon to make any repairs on that wharf?

A. No, sir. I repaired it once a little. That was a long time ago.

Q. You went over the wharves with Mr. Pilie and Mr. Brosnan?

A. Yes, sir.

Q. And they found everything in apple-pie order?

A. Yes, sir.

Q. Did they make any objection to them?

A. Made no objection whatever. All that they done was to tell me to fix that little place in the bulkhead. Then there was no cave in the wharves. This was later.

Q. What was the condition of the wharves at the time you
221 surrendered your lease on the 29th day of May, 1881, as compared with their condition when you went over them with these officers?

A. When we received the wharves, you mean?

Q. No; on the 29th day of May, 1881?

A. On the 29th day of May, 1881, which was the date of our surrender of the wharves to the city, being the date of the termination of our lease, they were in tip-top condition and ten times better than when we received them, except a few wharves in the third district.

Q. What do you mean by a few wharves in the third district?

A. We had to build them every year, you know. They would cave in the river. When the water falls the banks cave and the piles would go into the river.

Q. What extent of the wharves in the third district was there that did actually cave before the 29th day of May, 1881?

A. There was only two wharves—only two wharves down a little—two or three or four—I cannot say exactly.

Q. Only two wharves? How wide were the wharves?

A. Them wharves were generally 60 squares. The wharves were 60 to 70 squares. We call them squares. A square is 100 superficial feet.

Q. How much would you say the two wharves were?

A. Say about 100 or 120 or 150 squares.

Q. 120 or 150 squares?

A. Yes, sir.

Q. You estimate the cost of the wharves by the squares, don't you?

A. Yes, sir.

Q. What would be about the cost to rebuild 150 squares?

A. To build them new, right new, and wreck them, I suppose, about $24 a square. We have to wreck them, you know.

Q. What was the state of the water at the time you gave up
222 the lease, on the 29th day of May, 1881. Was it falling or was it rising or was it on a standstill?

A. I think it was falling.

Q. Then I understand you to say that at the time you gave up your lease that all the wharves that had actually caved in were about 150 squares?

A. Yes, sir; there was but two or three wharves. It couldn't be more than 150 squares. There is one wharf standing yet, what we built before.

Q. They have offered in evidence in this case photographs showing a terrible condition of the wharves and state of dilapidation.

A. Well, they might have done that after everything was given up. There was no such wreck at the time we gave up the lease. I can prove that.

Q. What was the condition of the wharves at the time you surrendered them to the city as compared with their condition when you took charge of them under your first lease?

(Objected to by Mr. Benedict as irrelevant.)

A. Well, as I stated, as I said, when we left them they were in ten times better condition than when we received them.

Q. Did the city make any demands upon you at the time you surrendered your lease with reference to repairing the wharves?

A. Not that I know of.

Q. It never took any steps against you for leaving the wharves in bad condition?

A. Not that I know of.

Q. Then, if I understand you correctly, Mr. Ellerman, the sum and substance of your testimony is that the present rates of wharfage charged can be reduced 42 per cent.?

A. Yes, sir.

Q. And still there would be a reasonable compensation left for the lessees for all the necessary repairs to the wharves?

223 A. Yes, sir; as we received the wharves, continued in that way, I would have been willing to take every one; I would take them for 50 per cent. less.

Q. Have you any knowledge of the tonnage coming to this city now?

A. No, sir.

Q. Do you know whether, as a matter of general history, the shipping is being increased every year?

A. It has been so, but I believe it has now fallen off.

Q. You don't know much about that?

A. No, sir.

Q. With reference to the charges made by you, at the time you had the lease, I understand you to say that if all this debt that you have been obliged to pay had been taken out you could have reduced your charges fully——

A. One-half.

Q. One-half, and still had a reasonable compensation?

A. Yes, sir.

Q. The debts that you were obliged to pay were debts in existence before you took charge of the lease, were they not?

A. Yes, sir.

Q. They were old debts. You have given, as I understand, very special attention to this wharf-building business?

A. It is nearly my business since I am in New Orleans—never done anything else.

Q. Is there anybody in the city of New Orleans that has had the same length of experience in this business that you have had and your firm?

A. Only the working men. There are some working men that have been on the wharves a long time, but no man that has had charge of the work.

Q. No contractors?

A. No, sir.

224 Q. You and your firm have had extraordinary facilities for knowing all about it?

A. Well, I had good knowledge once. It is my business since I was in the city. I want to state—I want to amend my answer—I mean if the 15,000 feet of bulkhead were taken off—and then there is the electric lights, the $40,000 for police, gas, and lights. Now, when we had the wharves we had to hire policemen and pay them $60 a month for several months. They didn't do their duty anyhow. Even for freight we had to hire men and pay them $50 a month.

Cross-examination by Mr. BENEDICT:

Q. You took the lease of the wharves in 1875?

A. Yes, sir.

Q. Do you know who had those wharves prior to 1875?

A. Yes, sir; we did.

Q. Your firm was then working for the city?

A. Yes, sir.

Q. Didn't the city pay your firm in wharf bonds for the work that you did up to the time that you took the lease?

A. Yes, sir; we couldn't get any money; we had to take the wharf bonds at 90 cts. on the dollar.

Q. Now, the city, it seems, managed the wharves herself from April, 1870, to May, 1875. How much did the city pay to you in cash and in bonds during that time?

A. Well, that I couldn't tell you, you know. I done the outside work, and I don't know. The office was always attended to by Mr. Lusk and Mr. Eager. I generally attended to the outside work; that I cannot tell.

Q. Don't you know that the city has spent over $2,500,000 in those five years?

A. That I cannot tell.

Q. Was Mr. Eager and Mr. Stanley and Mr. Lusk associated
225 with you during the time that you were working for the city before your lease commenced?

A. Yes, sir; Mr. Eager and Mr. Lusk; yes, sir.

Q. Not Mr. Stanley?

A. No, sir.

Q. Mr. Stanley came in afterwards, when you got the lease—in 1875?

A. Yes, sir.

Q. Now, do you know how much money the city collected from wharfage during the time you were making the repairs for the city, up to 1875; how much the city collected from the wharfage on steamboats and other vessels?

A. I cannot tell you. Turnbull told me, when he was in, they collected $320,000.

Q. Don't you know that they collected less than $900,000 during that whole period of time and spent $2,150,000?

A. That I don't know.

Q. It seems, when you took possession of those wharves under your lease of the 1st of May, 1875, that they were in such a condition that you left them in a ten times better condition when your lease ran out in May, 1881. What was their condition in May, 1875, when you took possession of them?

A. They were in such condition [that] when they piled the freight on them the wharves went down, and I had to work Sundays and at nights to repair them.

Q. Why did you make the wharves in such miserable condition?

A. There was plenty more builders—wharf builders—than I. I don't know that I did this last work. There was Mr. Carvin done more work than I did.

Q. Where was Mr. Carvin's work done?

A. I cannot tell you.

Q. Where was your work done before your lease commenced—from 1870 to 1875?

226 A. The city done it.

Q. I know; but you were working for the city?

A. I don't think I worked there.

Q. You said so?

A. I done some work there.

Q. I am talking about this space before your lease commenced.

A. That I cannot tell; if I look over my accounts I could tell it.

Q. Now, what was the condition of the steamboat landing on the 1st of May, 1875, when you took possession of the wharves under your lease?

A. They broke down, and I had to work night and day and Sundays with a force of men at the Vicksburg landing.

Q. What was the condition of the wharves at the Picayune pier?

A. Why, that was bad; that is down at the Red store, at the French market.

Q. What was the condition of the lower second district—the shipping wharves at the second district?

A. They were all wrecked.

Q. And the third district?

A. Yes; a couple of wharves there.

Q. How were they in the fourth district, up to Jackson street, above St. Joseph street?

A. Them we had to repair; the second year I had to build it all new.

Q. How were the wharves above Jackson street? Did you have to build those over again?

A. Yes, sir; we had to build them over again; had to build it all every year, more or less.

Q. How do you account for it when the city shows that she lost a million dollars on the wharves while they were under her management, from 1870 to 1875, and yet to have left the wharves
227 in the condition you state they were in, in May, 1875, when your lease commenced?

A. Well, I cannot tell. Several years the city repaired the wharves themselves. When we had to build the wharves, they were made of the best material—have to build them every three or four years new.

Q. Mr. Ellerman do you not think that it is a good thing to have the wharves lighted so as to show people how to cross the wharves in going to the steamboats and from the steamboats?

A. Well, I think they could be lit with gas for one-half of the price and give as good light as now.

Q. How many gas companies are there in this city?

A. There is only one—two now

Q. Two working on the river front that have lights there or only one?

A. I think there is but one; the Jefferson City has none there.

Q. Has there not been always only one gas company providing gas lights on the river front until the electric lights were started, and don't you know that this has been so ever since you have been in the city—in other words, that there has been but one gas company that had pipes and lights running along that river front ever since you have been here?

A. Yes, sir.

Q. There is but one gas company there yet?

A. Yes, sir.

Q. Up to the time that the electric lights came was not the city or the contractor obliged to pay the price for gas that the gas company asked because there was no competition? Don't you know that?

A. Yes, sir.

Q. Now, you say that gas is necessary to light the wharves, do you not?

A. Why, they ought to have some light.

228 Q. Exactly; steamboats cannot very well keep their lights burning in front of the bow of the boat to light passengers to and from the steamboats, can they?

A. Well, I have seen steamboats working by torchlight; fine light they are, too.

Q. When they are working at night unloading freight; but when passengers want to go from the city onto the boats, and from the boats into the city, is it not necessary that they should have lights to cross the wharves?

A. Why, they always had lights there.

Q. Now, a great deal of the freight that comes by these ships and steamboats, etc., is landed on the wharves, is it not?

A. Yes, sir.

Q. Is it right and proper that that freight should remain there without being watched or guarded?

A. Well, they generally have watchmen there, and when the steamboats and the ships come in they have plenty of time and have hands to discharge them.

Q. Is it not proper and necessary to have the officers of the city to tell the ships where they should land and where they should put their freight so as to make room for others? You have always done that, have you not?

A. Yes, sir.

Q. Now, if you were in charge of the city's affairs would you not have gas and police and wharfingers out on the levee to take care of this for the benefit of commerce, and for the benefit of the boats and ships?

A. Why, there have always been wharfingers and everything.

Q. Well, that is right. Now, in 1881, when you had the examination made by Mr. Brosnan, the city surveyor, and Mr. Pilie, his deputy, the wharves had not commenced to sink, had they?

A. A couple, as I said.

229 Q. Only a couple? How long before they had all sunk again out of sight?

A. I cannot tell.

Q. How many wharves did you take the planks out of before your lease expired?

A. I believe I expended forty dollars. I don't know whether it was two or three wharves we took the planks off.

Q. What did you do with the planks?

A. Piled them up.

Q. Sold them?

A. No, sir; piled them up—all taken care of.

Q. Didn't you frequently take and put on the piles that sunk in the ground top pieces, and put slips on the sides and build the wharves anew on the old foundation raised in that way?

A. By order of the surveyor? Yes, sir.

Q. So that when the wharf commenced to fall in it would go to pieces, would it not?

A. Sometimes; sometimes it would be better for blocking. We have drove new piles.

Q. Did you see the wharves built last summer by Mr. Aiken in the second and third districts?

A. No, sir; I pass there but little. I have been away from the city for two months or two and a half months.

Q. Do you know the size of the piles that he put and drove in the river on which to rest the wharves?

A. No, sir.

Q. Mr. Ellerman, when you first came to this city, when you first commenced working at the wharves in this city, what was the amount of wharfage on steamboats?

A. That I cannot tell you.

Q. Was there a reduction made on that afterwards; if so, how much?

A. That I cannot tell.

230 Q. What was the amount of wharfage on steamboats during the time that you had the lease?

A. Well, it was, I believe, sir, 10 cents a ton.

Q. The same as it is now?

A. Yes, sir; and then — the lower coast boats, making two or three trips a weeks, I believe it is 5 cents a ton. It is so much to pay every Saturday. I don't know how much it is.

Q. Don't you know that before 1860 that wharfage was 50 per cent. higher than it is now?

A. I cannot tell. I never took any interest in it then.

Q. Don't you know that, as you have read the specifications of the contract with Mr. Aiken and the city, that they require of him more work to be done than the specifications of your contract do, and more money to be paid out?

A. More money to be paid out?

Q. Yes.

A. Well, I think we had to pay the whole of the debts, $900,000, anyhow—about $900,000.

Q. For debts alone?

A. Yes, sir.

Q. Don't you know that the conditions as to what work is to be done in Mr. Aiken's contract require a great deal more than did your contract?

A. Well, if they did it, but I don't see that they do it.

Q. I am speaking about the contracts themselves.

A. Yes, sir.

Q. When the contract required so much more work to be done don't you always make your calculation to charge more when you get a new contract? I will now ask you the question in this way

If you have a contract to build 100 feet of wharf with 14-inch piles, and you bid $100 on the job, and to-morrow another contract is proposed to build the same wharf with 20-inch piles, would you not make your bid higher for that?

231 A. Why, yes.

Q. Don't you know that during the past 4 or 5 years that ships have gradually been leaving off coming to New Orleans, and that the place of ships is now supplied by a smaller number of steamships; don't you know that?

A. Well, it looks so, but I cannot tell you exactly.

Q. Don't you know that the railroads are driving the steamboats from the trade?

A. Well, it seems so.

Q. Don't you know that in Red river where there are 4 or 5 boats now that formerly there were 40 or 50 running between Red river and New Orleans?

A. In fact, I don't take any more interest.

Q. But you know there is a gradual decline in the shipping?

A. Yes, sir.

Q. Don't you know that a great many ships and steamboats land on the other side of the river now at private wharves that used to land on this side?

A. I don't think there is many.

Q. Was there not plenty of them last year?

A. No; not even last year they didn't do it. Last year they all lost a heap of money.

Q. Don't you know that a great many private wharves have been located over across the river?

A. Yes, sir; and caved in, too.

Q. It is a common thing every year for the wharves to cave in in this city, is it not?

A. No; only in few places; in the lower second district, and then there is a place in the fourth district, about Fifth or Sixth street, or somewheres there, or Seventh street.

Q. In all your experience did you ever find a way to prevent those wharves from caving in?

A. No, sir. If you will let me explain that. I have driven

232 piles on this revetment. When Mr. Bell was surveyor I drove piles 30 to 40 feet in the mud at this revetment and they caved in anyway.

Q. The lessees last year put them down 58 feet in the mud, and yet they caved in?

A. Well, I didn't do it.

Q. Well, it is an actual fact?

A. I doubt it. I doubt that, because they didn't have the machinery.

Q. Did you ever, while you had the lease, use steam pile-drivers?

A. Yes, sir; we had three steam pile-drivers.

Q. Worked by steam entirely?

A. Not all by steam entirely.

Q. The hammer itself, was it worked by steam or raised by steam only?

A. Raised by steam.

Q. It didn't have the hammer working by steam entirely?

A. No, sir; no tilt hammer.

Q. Did you see this new one they have?

A. I don't know. I saw one that came by the Jackson road driving.

Q. Suppose we take the wharves there where the steamboats land—say from St. Louis up to Julia streets—when those wharves are in good order cannot the steamboats load and unload there better than at any other wharves you know of?

A. I don't think there is a prettier place in the whole world.

Q. Is not that the best place in front of the city?

A. Yes, sir.

Q. Don't you think that the steamboats would dislike being obliged to land away down in the third or up in the fourth district?

A. Well, if the council don't give it away bye-and-bye; they are giving it all away.

Q. The more they give away the less wharf room they have?

233 A. And the less work they have to do. I suppose Morgan had to do some work.

Q. Don't you think that the steamboats could afford to pay twice as much to land where they do now than they could if they had to land anywhere else on the city front?

A. Well, they have good working ground there.

Q. Is it not nearer to all the produce merchants and nearer to passengers and the hotels and everything of that kind?

A. Yes, sir.

Q. Is it not worth more there than anywhere else?

A. Yes, sir; I think so; it ought to be.

By Mr. DENEGRE:

Q. Could they do it anywhere else on the river front?

A. They could fix a place.

Q. Could they discharge their freight anywhere else with the same facility?

A. If they were prepared to do it, it could be done, I think.

By Mr. BENEDICT:

Q. You think the city of New Orleans could take these wharves and make any money out of them?

A. As you say, they could never do it.

By Mr. DENEGRE:

Q. You say there are other places they could land at?

A. If they would do it.

Q. What other places in the city are there?

A. Why, there are a good many places.

Q. Name them.

A. Of course, now as they have given to the Louisville and Nashville road 700 feet and the other road has 900, I say they couldn't do it very well now.

Q. I mean a place for discharging. Is there any other place on the river front which gives as much space for discharging as on the levee between St. Louis and Julia streets.

234 A. No, sir; if they won't make the ground for to build a wharf there is none.

Q. Is there any other place in the city where the ground can be made?

A. I cannot tell.

By Mr. BENEDICT:

Q. Don't you know that the bid of Mr. Aiken under the contract, under the specifications of his lease, was equal to 10 per cent. less than the amount of your lease?

A. How do you mean?

Q. Don't you know that Mr. Aiken's bid, taking it altogether, equalled 10 per cent. less than the city was paying you for the whole work?

A. Why, the city never paid us anything. We had to pay the city.

Q. I am speaking now of the amount bid for the work. You have given the rates allowed by the ordinance of 1875. Was not Mr. Aiken's bid ten per cent., take it altogether, less than the ordinance to do the same work before when you had it?

A. Anywhere?

Q. The entire length of the wharves.

A. I don't know. When there is fully over 2,000 running feet given away that they do nothing to the railroads do their own work—I say no. I don't think so.

Q. Were you required to build any new wharves in the city in those places where the old wharves had caved in?

A. Yes, sir; we built $25,000 every year.

Q. New?

A. Yes, sir.

Q. There was this in your lease?

A. Yes, sir; when we were ordered by the surveyor we therefore did it.

Q. Did you build any during your whole five-years'-lease?

235 A. All the time.

Q. Go on, and tell me which new wharves you built from 1875 to 1881.

A. I cannot tell you; but I tell you I extended the steamship wharves; where I made the last connection we ran it in two years over 700 feet—about 700 in length.

Q. Well, what else?

A. Then we built several wharves in the lower district; they caved in again; we done what we were authorized; we always complied with the council's directions.

Q. You waited for the council?

A. They worked by plans; yes, sir; they would have to do it; when we got notice to do that work we done it.

Q. Have you seen the electric lights on the levee?

A. No, sir; never was there at night; never passed there at night, that I recollect.

Q. Could you not see them from a distance?

A. No, sir; I live way up town; over near St. Charles street.

Q. Suppose you had a contract with the city to build the wharves and keep them in repair, and rebuild them as they caved in, in the second and third districts, for luggers and steamships and ships, what rate do you think those vessels should be charged in order to do that work and make a reasonable profit?

A. What I charge?

Q. Yes, sir.

A. Well, I cannot say.

Q. Wouldn't it be four or five times as much as they charge now?

A. They complain now of high rates.

Q. You say those wharves have to be rebuilt every year?

A. They do so, more or less.

Q. More or less; that is true; therefore it requires a great expenditure of money to keep the wharves in this section in order?

236 A. Yes, sir.

Q. Then, the vessels that used those wharves, if they only paid the ordinary rate that is charged all vessels in port, wouldn't pay the cost, nor anywhere near the cost, of rebuilding those wharves, would they?

A. To rebuild them?

Q. Yes.

A. Well, as we generally done it, we built them new, and then they caved in; we drove them, and ringed the piles even, and they caved in anyway; so, when we saw that we had to build them every year, I told them to build them light; so we built them light after that. There is a difference in the prices of material.

Q. The low rate of wharfage, with the tonnage in the second district, don't pay anywhere near the cost of rebuilding the wharves; if you depended on that alone I reckon you would sink money in the business all the time, would you not?

A. I saw the time there when they paid very well; when they had three or four ships on every wharf.

Q. That time has long gone by?

A. It was in our lease.

Q. During the whole time of your lease?

A. No, sir; but sometimes had four ships there.

Q. During the last year or two of your lease how many did you have there?

A. I believe, 4 years ago, had 4 or 5 there; Mr. Brewster was harbor-master.

Q. I am speaking of the last year or two of your lease.

A. No, sir; I have not been down there for nearly two years.

Q. I am speaking of your lease.

A. Yes, sir; in our lease we had three or four upon every wharf.

Q. At what time?

237 A. I cannot tell. When they were repairing they moved uptown so as not to crowd the third district.

Q. Do you know whether any action was taken by any of the commercial associations of this city looking towards the rebuilding of the wharves and making specifications of what our shipping required—those provisions in Mr. Aiken's lease?

A. Yes, sir; I heard something about it.

Q. Do you know where they met and what they did?

A. I never went there. I was told it was in the city hall, or somewheres.

Q. Don't you know that the representatives of our different associations framed this lease; that very soon afterwards it was advertised in the papers, and that Mr. Aiken bought it?

A. That is what I heard.

Q. Now, did you make a bid for that contract that Mr. Aiken bought?

A. No, sir.

Q. Did you make any calculation to make a bid?

A. No, I did not; and I don't think Mr. Eager did. I didn't make any and my partner didn't, I think.

Q. Did you or Mr. Eager or Mr. Lusk make a statement to anybody that you wouldn't take that lease with an $80,000 bonus at the same rates that you had been receiving?

A. I didn't for myself; I don't know what my partners done; I didn't.

Q. Do you know how much money Mr. Aiken was required to expend during the first year of his lease for those wharves?

A. No, sir; I cannot say.

Q. Don't you know that he spent nearly $100,000 more than he received?

A. I don't know; I cannot say.

Q. Don't you know that these wharves under the specifications framed by these commercial associations and advertised by

238 the council were advertised in the papers at six cents a ton; and don't you know that there was no bid for them?

A. I don't know.

Q. You didn't bid for them?

A. No, sir.

Q. Nobody bid for them? Don't you know that they were then advertised to be sold to the highest bidder, and that we took them at the lowest rate possible? Did you ever see the wharves built at Vicksburg, Memphis, or St. Louis or Cairo?

A. No, sir; I saw them built in Chicago.

Q. Do you know what the boats have to pay in New York for wharfage?

A. No, sir; I cannot say.

Q. Do you know what the steamship lines have to pay for the piers that they use in New York harbor?

A. I cannot tell.

By Mr. DENEGRE:

Q. Have you ever been to Vicksburg?

A. No, sir; I have been in St. Louis, but they have no wharves.

Q. At St. Louis?

A. No, sir.

Q. You say you have been at St. Louis?

A. Yes, sir.

Q. What have they got at St. Louis?

A. It is an inclined plane; it is paved. Then they have to haul it out of them floating wharves—barges.

Q. Don't you know that the steamboats have to pay to land at that inclined plane—paved place—and also have to pay the wharf-boats?

A. I heard something about it. Mr. ——; what is the name of the barge-line man?

Q. Mr. Ray?

A. No, the other gentleman, Mr. Harstick; he told me it
239 was a heap less in St. Louis than in New Orleans. He told me so, and Mr. Ray said otherwise. I told him, when I was in St. Louis, what Mr. Ray said, and he said Mr. Ray didn't know what he was talking about.

Q. Well, you know that in St. Louis there is no caving bank there, is there?

A. Not that I know of.

Q. In New Orleans, when is the work required to be done?

A. It ought to be done generally, say, from the middle of June up to this month.

Q. Whilst the river is low?

A. Yes, sir.

Q. It cannot be well done in high water, can it?

A. I have been in the lower district and built them in high water; had to build them over again in one year; had to build them twice in one year—some wharves—could not tell exactly what portion it was.

Q. At the time that you bid for the contract for the lease of 1875 how many bonds of the city issued for building the wharves, known as the wharf bonds, did you and your firm hold?

A. That I cannot tell you.

Q. About how much?

A. I don't know how —: 150 or 180, something like that.

Q. $180,000?

A. I believe so; I cannot tell exactly, though.

Q. At what rate did you buy up the bonds that were outstanding?

A. Well, the cheapest transaction that I made—and the balance I don't know how my firm bought—I bought, I believe, 20 bonds

or 15 bonds; I cannot tell exactly; I bought them very low; that was below 50.

Q. Don't you know that they ran between 45 and 55 and that you bought them all in?

240 A. No, sir; I think the other bonds would stand—say average 65 to 70, I think; I cannot tell exactly.

Q. How much were you paid by the city of New Orleans, prior to your contract of 1875, for the work that you did? How much money did you receive from the city of New Orleans for the work that you did?

A. That I cannot say.

Q. Can you not give it to us?

A. No, sir.

Q. Can you get it for us?

A. I don't know if I can or not.

Q. Do you know at what rate you were paid—how much per square?

A. We done the work from $20 to $21, $22, $23 per square. I suppose about it.

By Mr. BENEDICT:

Q. After your contract had gone on for a short time, from 1875, didn't you make application to the city to have some modifications made in it or you would throw it up?

A. Yes, sir.

Q. Why was it?

A. Well, that we couldn't procure any bonds.

Q. You couldn't do what?

A. I say they held them high; we couldn't pay 90c. or a $1 for the bonds; we couldn't afford it.

Q. Couldn't afford it?

A. No, sir.

Q. Then you threatened to throw up the contract unless they made some modification?

A. Yes, sir; the bondholders were all satisfied. There was Mr. Carvin and Mr. —— ——, and, I believe, Mr. Gasquet. They wanted me to say that I would go in with them, and I wouldn't do it. I told Mr. Gasquet that if you want me that I would super-

241 intend the wharves for $10,000, but that I wouldn't go in partnership with them—that I would run the wharves as superintendent for them. No, sir; they wouldn't do that. They wouldn't agree to that. Mr. Carvin came to me, Mr. Gasquet and several others, to know if I wouldn't go in with them if they would take the wharves. I wouldn't do it; I didn't want that. They wanted me to go in as partner, and I wouldn't do it. I told them I would superintend them for a good salary. You know, Mr. Benedict, most of the wharf bondholders seeing the thing, they wouldn't have done it—the city wouldn't have done it.

Q. At what rate did you make your agreement with Mr. Gasquet, Mr. Carvin, Mr. Gubernator, and the others?

A. I don't think that Mr. Gubernator had any. Mr. Gasquet's

bonds cost us about—I suppose we paid him 60 or 65, or something like that.

Q. Now, Mr. Carvin——

A. Well, he died.

Q. What settlement did you make for his bonds?

A. We had to buy them at every rate we could get them at. We bought some from some woman, and we bought them very low. I believe we bought them at 45 or 42, or even less.

Q. Mr. Ellerman, you have stated that you could take the contract for these wharves, if they left out the electric lights, left out the police, left out the wharfingers, left out the piled bulkhead in the third district, at from 40 to 42—40 to 45—per cent. less than what you had it before?

A. Yes, sir.

Q. Well, now, leaving all those things in, how much less could you take it for? Leaving them all in. Leaving in the electric lights, leaving in the wharfingers, leaving in the police, leaving in the piled bulkhead, etc., going over the wharves, building and raising those that have fallen into the river, doing this much new work every year, how much less than the present rates would you take it for?

242 A. I wouldn't take it at all, as I stated before.

Q. There is another new council that went into power lately?

A. Yes, sir.

Q. Is this hostile to you?

A. Well, yes, sir; the principal any way.

Q. The mayor is the principal?

A. Well, the paid men.

Q. Do you mean Mr. Fitzpatrick?

A. The administrators who get a salary.

Q. Now, Mr. Ellerman, you have had considerable experience on these various wharves, and have been at work on them, as you say, as a contractor, as a lessee, since about 1850?

A. No, not that long. I have been since 1859, when Mr. Batson, and Mr. Eager, and Mr. Stanley were the lessees, and I came there as there head foreman or superintendent. That was in 1859.

Q. Have you seen the wharves within the past month?

A. Some of them; yes, sir.

Q. Where?

A. In the fourth district, where they have been repairing.

Q. You have only seen the ones in the fourth district?

A. Then I was on the bulkhead, where they were once working there, but they had it pretty near done when I came back.

Q. When your lease ran out what wharves between Ursuline and Piety streets were fit to tie a steamer to—when your lease ran out in May, 1881?

A. That I could not tell. I only know I didn't go down afterwards any more.

Q. What was the condition of the wharves in the first and fourth districts when your lease expired?

A. Good; pronounced so by the surveyor. If they were not so they would inform us to rebuild them.

Q. Do you know whether the wharves were entirely rebuilt
243 in the year 1866 or 1867, just after the war, by the city surveyor, Mr. —— ——?

A. I cannot tell you. They built a good deal of wharves.

Q. Don't you know that in the year 1866 or 1867 they built new wharves all over the city to replace the old ones broken down, and spent over $800,000 to do it.

A. I cannot tell positively.

Q. Didn't you do a great deal of that work yourself?

A. Done some work, I know.

Q. Didn't your firm have large contracts with the city to do that work during those years, just after the war ended?

A. I know we done some work there; fitting up these wharves and extending them.

Q. What amount did you receive for wharfage for the five years and eleven months that your lease ran—under the original lease and the modification?

A. Well, I cannot tell you.

Q. Can you ascertain it from the books of your firm?

A. Yes, sir.

Q. I call for the statement. Do you know what the receipts of Jos. A. Aiken for the first twelve months of his lease expiring the 1st of June have been?

A. No, sir.

By Mr. DENEGRE:

Q. Mr. Ellerman, you said that had the wharf bond debt been taken out of your lease you could have reduced the rates 50 per cent. Didn't I understand you to say that if you had the lease under the condition that that debt, the wharf-bond debt, was taken off your shoulders that you could reduce the rates 50 per cent.?

A. Yes, sir; that is, if the electric lights and the wharf bonds and the $80,000 steamboat debt and the $30,000, for what they say was for police, gas, and so on; but they never did that.

244 Q. Do I understand you to say that those items which you have mentioned will amount to as much as one-half of the receipts?

A. Yes, sir; will certainly amount to $150,000.

Q. They will amount to one-half of your annual receipts?

A. Yes, sir.

Q. You have stated that the council was opposed to you, hostile to you?

A. Yes, sir.

Q. Don't you know that some of those administrators were opposed to the giving of this lease to Jos. A. Aiken?

A. I don't know how it is, but that man that they called Guillotte, of the third district, told some men and they told me, and I

can prove it to you by Samuel Brooks and others, that a certain administrator asked them.

Q. I ask you if you didn't state that the council was hostile to you?

A. Yes, sir.

Q. Was Fitzpatrick one of them?

A. They stated that we shouldn't have it, even if we were the lowest bidder.

Q. I ask you if you do not know that Administrator Fitzpatrick was opposed to the adjudication of this lease to Joseph A. Aiken?

A. I cannot say positively.

Q. Do you know that he was opposed to the adjudication of the lease at all?

A. I cannot tell positively.

Q. Now, cannot you give us the amount of the work that you did under the contract with the city of New Orleans just before you got the lease in 1875?

A. No, sir; I cannot.

Q. Will your books show the amount of money that you
245 received from the city of New Orleans for the work that you did just before 1875?

A. I suppose the amount is there (referring to Mr. Eager's testimony).

Q. That is, during your lease?

A. I don't know that we have those old books yet. That is a different firm. We didn't keep those books for 20 years or 15 years back. I was not in the firm at that time. I believe I was only a foreman.

Q. Then you cannot tell us how many wharves you built along the river front just before your lease went into operation?

A. No, sir.

Q. Did you build the steamboat wharf?

A. We sometimes built it—sometimes the steamboats let us build it.

Q. Now, you have stated that the council was hostile to you—that they were very hostile to you. In what way?

A. They would compel me to build $75,000 of bulkhead that had to be repaired every year. They would compel me to extend the wharves 25 feet away further than is necessary. If you don't like a man you can push him, you know.

Q. They would compel you to comply with the ordinance?

A. Yes, sir; still, some other man they would let him slide.

Q. If they compelled you to comply strictly with the ordinance there was no money in it?

A. I don't think there was.

Q. What I ask you is this: If that council compelled you to comply strictly with the ordinance to run out to 25 feet depth of water and to build the bulkhead there was no money in it for you?

A. I don't think it would. I don't think so.

Q. Now, did that council ever make you comply strictly with the conditions of your lease?

246 A. Yes, sir; whatever they wanted us to do we did it.

Q. Were you compelled all through your lease to comply strictly with its obligations?

A. Yes, sir; what they asked us to do we done it.

Q. I don't ask you that.

A. I don't know what else to answer.

Q. You only did the work that they asked you to do?

A. Certainly; what else did they have a surveyor for.

Q. I want to know whether any of the council under which you worked were hostile or friendly to you?

A. Why, they were hostile before Mr. Cavenac. He was hostile to me in the former council. He said he would resign if the contract was not annulled. I saw it in public print.

Q. How many councils were in the city hall during the continuation of your lease?

A. Well, I believe——

Q. There were three different city administrations, were there not, under your lease?

A. I believe it commenced under Leeds, and then came Pilsbury, and then Patton.

Q. Were all those councils hostile to you?

A. I cannot tell—more or less—some of them.

Q. Were you not on very friendly terms with one or two of the members of those city councils? They didn't push you any more than they ought?

A. They had no pushing to do; it was the surveyor.

Q. How did you stand with the surveyor?

A. We always did what he asked us.

Q. Now, in your statement that you could have taken the lease at a reduction of 50 per cent. if you had been relieved of the wharf bonds, did you calculate the wharf bonds at the price they were to you originally, or to the price after the compromise you had made?

247 A. Now, the wharf bonds were so that I suppose Pilsbury would take them even at the premium scheme. Now, you may know what they were worth. So we were compelled to take that contract to save ourselves.

Q. Mr. Ellerman, how many of those wharf bonds did your concern own?

A. I cannot say exactly; 150 or 160; whatever it is.

Q. You say that, excluding the police, electric lights, and the caving of the wharves, and the piled bulkhead, that you could take the present lease of Joseph A. Aiken & Co. at about 42½ per cent. less than they took it at. Is it not the fact that this statement of yours is based upon the receipts as you knew them during your contract?

A. Yes, sir; that is, from the first start, you know.

Q. Now, Mr. Ellerman, in your lease don't you know that you were only called upon to rebuild the wharves where they fell in from ordinary wear and tear, and that you were not compelled under such

lease—under your lease—to rebuild them in case of storms destroying them, or in case they were destroyed by lightning?

A. That never happened.

Q. Don't you know that that was the case in your lease?

A. No, sir; I don't think that is in the lease.

Q. Well, that is in this. In your old lease you are not required to rebuild any wharves that are destroyed by unusual storms or by lightning?

A. You mean levees?

Q. I mean the wood-work?

A. The levees—not the wood-work.

Q. Don't you know that under the present lease the wharf lessees are compelled to rebuild them?

A. It makes no difference. Why, we done it all the time. We had the levee as high as when they was when we received them.

248 Q. I tell you that under your old lease—it is shown there in print—that you were only called upon to rebuild the wharves and levees where they fell in from ordinary wear and tear—nothing else; and that Aiken & Co. are called upon to rebuild them, whether they are destroyed by the act of God or by ordinary wear and tear. Now, does not that make a difference?

A. They cave in by the water. Where they cave in we had to build them in the third district.

Q. Didn't you have many and many a controversy as to whether you had to rebuild them?

A. It is the levee. The wharves we always did. We ought not to have done it. We would have gained to not build them. I think we done always our wood-work and levee work.

Q. There is some of the levee work you refused to do?

A. Yes, sir; we done it by order of Shakspeare.

Q. There was a suit about it and you won the suit?

A. Yes, sir; won the suit.

Q. Was there any reason why you refused to do it?

A. It was when we had the high water and the storm. We took the records of the custom-house and from the engineer department, and they said that they didn't have such a storm in 20 years. The storm destroyed everything. There was an old saw-mill—Jackson saw-mill—that had over 500 saw-logs drifted loose—washed it all away, some of it entirely—and those logs acted as a battering-ram and destroyed our levees.

Q. Did you make the city pay you to do that work?

A. Yes, sir; but we never got the money.

By Judge KENNARD:

Q. There has never been any such storm since?

A. No, sir.

By Mr. DENEGRE:

Q. Suppose you had been called upon under your lease to do all that work without any claim against the city, wouldn't it
249 make some difference to you: wouldn't it make some difference in your receipts?

A. Oh, yes, sir.

Q. You have said that you would not bid for this lease because they had loaded it down by the ordinance so much. What did you mean by that?

A. Why, the bulkhead and the electric lights, and extending the wharves into 25 feet of water, and connecting the wharves.

Q. 12 feet for steamboats. That would be less?

A. Yes, sir.

Q. Is it not true, Mr. Ellerman, from your experience, that you cannot tell the condition in which the wharves of this city are until you get extreme low water?

A. Generally then it shows.

Q. Can you tell the condition of the wharves until you get low water?

A. Of course you can look at it.

Q. I don't mean that, but can you tell the condition of the wharves until the low water comes—correctly judge of the condition of them?

A. No; not generally.

Q. Mr. Ellerman, can you show us by your books what your receipts were the first year?

A. Didn't Mr. Eager give it to you?

Q. He gave it in lump.

A. I cannot tell you.

Q. Can you show us what your receipts were during the first few months of your lease, when the wharves were ten times worse than when you left them?

A. When Mr. Eager comes we may do so.

Q. We call for them. We call upon you to produce your annual receipts and the receipts for the first year, by the months.

250 A. I don't know if we can do it. I cannot promise that. You will have to wait until Mr. Eager comes.

NEW ORLEANS, LA., *Dec. 1st*, 1882.

I sign this deposition, after having had it read over to me, with the following corrections: Where I said that the wharves were ten times better when we left them than when we took them I meant to say ten per cent.; and I think now that there were about 200 squares, more or less, of wharves in the third district that had caved when we gave up the lease on 29th May, 1881. I said in my deposition about 150. I think now there were about 200, more or less.

HENRY ELLERMAN.

Testimony Taken by Consent, on Behalf of Complainants, at the Office of Messrs. Kennard, Howe & Prentiss, New Orleans, La., Dec. 4th, 1882.

Major E. A. BURKE sworn by MARK BREEDEN, Jr., notary public.

Examined in chief on behalf of complainants by Judge KENNARD as follows:

Q. Major, what is your present position in connection with the government of the State?

A. State treasurer.

Q. What position did you occupy prior to that time—immediately prior?

A. Tax-collector of the first district?

Q. How far back does that extend?

A. '77 to '79.

Q. Were you part of the city government of New Orleans in 1875?

A. Yes, sir; 1875 and 1876.

Q. Was not that the year in which the city made a lease of the wharves with Eager, Ellerman & Co.?

251 A. Yes, sir.

Q. Did you have occasion at that time to investigate the cost of repairing and reconstructing the wharves and the annual receipts from the same?

A. I did

Q. For what reason did you make such investigation?

A. It was in the line of my duty—I was administrator of improvements of the city of New Orleans—and with the view of determining my vote upon the question of the wharf lease.

Q. Did you or not have special reference to ascertaining whether or not it was more economical to do the work necessary on the wharves by lease or for the city to do it directly?

A. That was the object of my investigations.

Q. Did you at that time have an accurate survey of the wharves made?

A. I had a survey made, which I believe to be accurate—made by the city surveyor.

Q. Do you happen to recollect what the result of that survey was?

By Mr. DENEGRE: Objected to on the ground that the survey speaks for itself.

By Judge KENNARD:

Q. What did the survey show in superficial squares of wood-work necessary to be done? You can refresh your memory by the printed pamphlet made part of your affidavit if you desire it. Witness looks at the printed pamphlet, annexed to the affidavit on file, made by him.

A. 14,908 squares—superficial squares—of which 1,582 squares were required to be kept in order by the elevator company, the railroad company; and the steamship companies, leaving 13,326 squares to be kept in repair by the city.

Q. Since that time, Major, have any of the wharves been diverted that were then in the city—been diverted to the use of pri-
252 vate corporations, that had to defray all the expense connected with their maintenance?

A. Yes, sir; I cannot particularize them. The only ones in my mind at the present time are those dedicated to the Jackson railroad and I believe some steamship companies, but I have not followed the matter.

Q. I believe there has been some to the Nashville railroad, have there not—wharves erected since that time?

A. I can only speak by public report; it has not been my business to follow the course of construction or the repairing. I have only done it in a general way; I cannot speak particularly.

Q. Now, sir, is the area of wharves producing revenue about the same as it was in 1875?

A. I think it is approximately the same. I will state in that connection, Mr. Kennard, that I believe there was the requirements for the construction of—doing work on—an additional amount of wharves, but I cannot say whether these grants that have been made to the railroad companies, would offset that additional construction or not.

By Mr. DENEGRE:

Q. What lease do you refer to?

A. In each one of the leases there was a provision that the city council might require the construction of additional wharves.

Q. When you speak of leases, please mention which one you mean.

A. To the best of my recollection, my impression is that that stipulation was embodied in both of the leases.

By Judge KENNARD:

Q. In speaking of each one of the leases, you have reference to Eager, Ellerman & Co.'s lease and the subsisting lease between the heirs of Aiken?

A. Yes, sir.

Q. I would be very glad to have you make, as nearly as
253 you can, an estimate of the cost of maintaining the wharves for the period of 5 years, commencing in 1875, or from 1875 back, whichever is more convenient for you; no objection to your using that memorandum to refresh your memory.

A. It is essential for me to do so, as I cannot remember now.

Q. There is your testimony as taken before. (Witness looks at printed pamphlet and testimony.) I would ask you to make your estimate, based upon the requirements of the present lease between the city and Aiken?

A. I would estimate the cost of the maintenance of wharves under the existing lease as follows:

Fixed charges—bulkheads	$59,500 00
Police and supervision, $40,000.00 per year, say	200,000 00
New wharves, $25,000 per year	125,000 00
Electric light, $25,000 per year	125,000 00
Repairs to wood-work, $61,600 per year, say	308,000 00
Total	$817,500 00

For 5 years. The item of repairs to wood-work is estimated upon the basis of 14,000 superficial squares, which would cost to construct $22.00 per square, or $308,000 for the total area.

Q. Just there I would suggest whether or not that is not on the basis of the entire reconstruction during——

A. This will extend my testimony. It has always been estimated by the city authorities and admitted by the contractors that a fair average of the wear and tear of the wharves was 20 per cent. per year, which would be $61,600 yearly repairs, or $308,000 for the period of five years. That answers your question.

Q. Which is substantially a reconstruction of the entire wharves in 5 years?

A. Yes, sir; which is substantially a reconstruction of the wharves within 5 years.

Q. Your estimate is based, as you stated, on the rates of what is fixed in the existing lease?

254 A. I have not read that; I have answered your question with reference to the cost of construction.

Q. What is your estimate of the minimum of revenue for 5 years—for the 5 years of the existing lease?

(Witness looks at printed pamphlet and testimony previously taken.)

A. I estimate the wharf revenues at $241,000 per year; the revenues for 5 years prior to 1875 had averaged about $253,963.56 per year, and, although there was some reduction made in the wharfage under the existing lease, I believe that the increased tonnage arriving at this port would at least offset the decrease in the wharfage. Upon this basis the total revenues for the 5 years would amount to $1,205,000, and the expenses for that period to $817,500, and yield a surplus to the lessees of $387,500 during the five years, or $77,500 per year.

Q. What difference would that leave between the expenditures and the receipts?

A. That I have stated.

Q. You have stated that?

A. Yes, sir; the difference for 5 years and the difference per year.

Q. Suppose, for the sake of argument, that in that estimate you did not allow for any increase of tonnage, but made the subtraction that would be substantially equivalent to the loss incurred by the lessees by the diminution of prices in the lease, diminution of charges, what would be the total subtraction for 5 years? You are familiar with what those figures are, are you not? If you are not, I will read you Captain Aiken's bid.

A. No; I do not recollect at the time what was the percentage of reduction.

Q. Well, I can give you the exact figures in a few words by reading you the letter of Captain Aiken accepting the bid.

(Counsel for complainants reads to the witness the letter of

255 Joseph A. Aiken, dated New Orleans, May 27th, 1881, which is in evidence, or will be offered in evidence, proposing to charge the same rate of wharfage as the ordinance of 1875): "With the exceptions that I will at no time charge ocean steamships more than at the rate of 15 cents per ton; that for the 3d year of the lease I will reduce the rate on all ocean tonnage and on all steamboats and barges and other licensed vessels employed regularly in transporting merchandise on the Mississippi river 10 per cent., and that for the 4th and 5th years I will make a reduction of 20 per cent. each year on the rates named in the ordinance of Jan. 19th, 1875; also that ocean vessels arriving in ballast shall not be charged wharfage during the time they may be engaged in unloading, but which period shall not exceed 5 days from the time of arrival, provided that said ballast is sold to the city or the wharf lessees, and also that vessels arriving in ballast and loading exclusively with grain shall not be charged more than 5 cents per ton for the first 15 days and an additional charge of $\frac{1}{3}$ of 1 cent per ton for each additional lay day. I herewith enclose my check," and so forth. Now, in order to refresh the Major's memory, I would like to read this ordinance, which fixes and limits the rates, so that he will be in possession of the whole thing. In order to refresh your memory, and be certain that your memory is accurate of what is contained in that ordinance, I will read you the ordinance which is the basis of this lease. (Reads from the ordinance as printed in the "New Orleans Times," May 28th, 1881.) Would you be able to approximate without going into figures—make a safe approximation of subtraction, caused by that reduction?

A. I would not like to make an estimate, Mr. Kennard, in the absence of what would only be conjecture in the absence of facts.

Q. You have had no occasion to make that particular estimate?

A. I have not had occasion to make that particular estimate.

(By consent of counsel Mr. Purke is to furnish his answer subsequently.)

Q. Major, did you not have occasion, during your occu-

256 pancy of the office of administrator of improvements of the city of New Orleans, to make a careful estimate of the receipts and expenditures connected with the wharves for the years preceding that time?

A. Yes, sir.

Q. And the probable cost of the maintenance? Did you make a formal report to the council of your investigation?

A. Yes, sir.

Q. Is that report in existence?

A. Yes, sir; it is printed.

Q. I wish you would look at this document that is attached there to your affidavit in this case, and state whether or not that is the report made by you.

A. (Witness looks at printed pamphlet.) Yes, the report is correct, with the exception of two typographical errors.

Q. To be found where?

A. To be found on page 10. The printed copy reads: Estimated expenditures for the coming nine years, $100,052; it should have read: Estimated expenditures for the coming year $100,052; and on the following line the printed copy reads: Estimated expenditures for the subsequent ten years $737,715; should have read: Estimated expenditures for the subsequent nine years. That was a new estimate made for ten years, as will be seen by the language of the report immediately preceding.

Q. In that document?

A. Those items are on page 10.

Q. Can you readily make the correction there with your pencil?

A. Yes, I have done so.

Q. From what source did you derive the facts and figures contained in that pamphlet?

A. From a careful investigation of the books and records of the department of accounts, in the city surveyor's office, and the office of the department of administrator of improvements.

257 Q. Was it possible to have made a more accurate estimate, from any sources of information in existence at that time, than you did make?

A. I don't think so. In all of the discussions provoked upon this question, I have never seen the figures questioned, except in a general way; but no person yet has pointed out any errors in the figures. I gathered them myself and did not trust to clerks or employees. I gathered the figures from personal investigation.

Q. At the time you submitted that report to your coadministrators was the accuracy of any statement of facts therein contained questioned?

A. None.

Q. It was not? You have stated before that your department, the department of improvements, had this matter of wharves especially in charge?

A. Yes, sir; under the charter.

Q. At that time?

A. At that time it was my duty to control the construction and the repairing of wharves.

Q. Were or were not your opportunities rather better than those of any other administrator to obtain accurate information on that subject?

A. Very much better, because it was my special duty to have charge of the work and to investigate the accounts.

Q. Was not your knowledge of that subject largely due to your peculiar office, and entirely superior to any citizen—in other words, would you not be considered as an expert on that question at that time?

A. I read all the council proceedings and examined personally all of the accounts relating to the question of wharf revenues and expenditures of wharves carefully from 1852 up to the day of the institution of Eager, Ellerman's wharf lease, and I believe——

Q. Which was in 1875?

A. Which was April or May, I think, of 1875.

258 Q. May, 1875?

A. And I believe that I was in possession of every material fact connected with the revenues and expenditures from 1852 to that date. Will that answer your question?

Q. Yes, sir; Major, here is quite a long question that I wish to ask you, and I make it long because I believe it is the only way that I can make the whole thing, the question and answer together, shorter. This is a suit in the United States circuit court, eastern district of Louisiana, by the Ouachita & Mississippi Packet Company against the present lessees of the wharves of New Orleans, the object of which is to enjoin the collection of the present wharfage tax, on the ground that the charges made are excessive and beyond a reasonable compensation for the facilities furnished by the city of New Orleans to commerce. It is alleged in this bill of complaint that under the ordinance or by the ordinance under which the lease is made it is provided that the person or persons to whom shall be adjudicated the said revenues collectible, as may be provided, shall accept the wharves, landings and levees in the condition in which the same may be on the 29th day of May, 1881, and shall repair and always keep the same in good order and condition during the whole term of their contract. The said ordinance, and especially sections 5, 6, 7, 8, 9, 10, 11, 12, and 13, describe the manner and style of the repairs and the new work to be performed under the contract; and section 11 provides for the building of additional new wharves by the lessees at an expenditure not to exceed $25,000.00 in any one year. Section 12 of the ordinance provides that the lessees must accept the wharves in front of the city in the condition they were in on the 29th day of May, 1881; to fill up the same during the first year of their contract, so as to place the outer edge of the same at the level now established for the steamboat landing at Common St.; to grade the same from there—the outer edge—to the pavement of the street in the rear, on a regular declivity. Section 13 also provides that the lessees are

259 bound to keep in good order and condition during the whole term of their contract all the revetments on the outside of the levees in front of the districts—the said 1st, 2d and 3d districts; to rebuild all new revetments; to replace those that may perish or be destroyed from any cause; to build during the first two years of the said lease a piled bulkhead in the 3d district, from Marigny to Delery streets (which is now substituted by the payment of $55,500.00), and to keep the same always in the best order and condition during the whole term of the said contract; and to rebuild the same if destroyed, whether by decay, caving of the banks, or the bed of the river, storms, or otherwise. Section 14 of the ordinance provides that the said lessee is bound to furnish (I call your atten-

tion particularly to this) section 14 of the ordinance provides that the said lessee is bound to furnish all necessary apparatus and light, with the electric light, all the levees, landings, and wharves from Toledano street to Congress street, being the entire business river frontage of the city of New Orleans—the lamps or lights to be placed at no greater distance than 250 feet apart, and the height at which the same are to be erected to be determined by the city council—the said lamps or lights to be kept lighted each and every night from sunset to sunrise; and the class, quality, and make of the said lights to be designated by the said city council. Section 26 of the ordinance provides that the said lease or the farming of the said wharfage charges or dues are to be adjudicated to the person or persons agreeing to receive the lowest rate or rates of wharfage, and to pay annually to the city of New Orleans, in equal monthly instalments, the sum of $40,000—$30,000 of which shall be devoted to the maintenance of a harbor police for the protection of commerce along the river front of the city, and the remaining $10,000 to be set apart and devoted exclusively to the payment of the salaries of wharfingers, contravention clerks, signal officers, and other employees of the levees in connection with the departments of commerce of the said city, and in connection with the foregoing, to keep
260 the wharves lit with the electric lights, in the said ordinance elsewhere provided. Have you paid attention to the question thus far?

A. Yes, sir.

Q. Now, I wish to know if the various specifications, or any of them, just read, were eliminated, were excluded from this lease—or in other words, if the lessees were not compelled to make the expenditures that have been enumerated in my question—whether the present rate of wharfage, with which you are familiar, would or would not be in excess of a reasonable compensation for the use of the wharves?

A. I believe it would be in excess—largely in excess.

Q. Largely in excess?

A. Yes, sir.

Q. I would state to the witness that we have in our bill of complaint signified our willingness to pay 6 cents instead of 10 cents—I would like to ask you whether, eliminating the items I have just read, whether 6 cents a ton instead of 10 would not be a reasonable compensation?

(Objected to by Mr. Denegre upon the ground that the witness' opinion is necessarily vague, unless he has knowledge of the tonnage and of the revenues derived under the lease as at present in existence.)

Q. Answer it now.

A. The present rate, I understand, is 10 cents a ton for steamboats?

Q. Yes, sir.

A. What is the question—say?

Q. Would not 6 cents instead of 10 be a reasonable compensation

to the lessees for the requirements of the lease, eliminating the items which I specified and which I contend are extra?

A. I think so.

261 Q. There was such a thing in existence at the time you were administrator of improvements, as the harbor police, was there not, major?

A. I think it was organized during our——

Q. Was that police paid differently from the ordinary police of the city at that time?

A. I think not; it was paid on the rolls of the police department.

Q. Had or not that been the rule in the antecedent history of the city?

A. That was the rule, that they were—that a certain amount was paid into the city treasury for police purposes, but the persons rendering the services were put upon the rolls of the police department.

(Objected to by Mr. Denegre upon the ground that the rules of the departments of the city government at that time speak for themselves and are the best evidence of their contents.)

Q. You are familiar, of course, with the duties of what is known as the harbor police?

A. Only in a general way; had no specific connection with that department.

Q. Are the services rendered by what is called the harbor police services exclusively for the benefit of commerce, or are they not, in point of fact, such services as are rendered to the whole body of citizens by the general police?

A. Both for the protection and in the interest of commerce, and for the preservation of the public peace and its relation to the welfare of the whole community.

Q. Counsel for complainant states to the witness, in order that he may have a clear comprehension of the question, that it is contended on b half of complainants in this case that the tax for the payment of th[C]s harbor police under no circumstances should be drawn exclusiv[l]ely from commerce, unless the services they render are exclusively for commerce, and are absolutely necessary to commerce. With that explanation do you repeat the answer that you made before?

262 A. I answer that, in my opinion, the services are both for the purposes of commerce and for the public welfare.

Q. Is it not absolutely necessary or a necessary conclusion that if the present lessees are excused from making any original construction connected with these wharves that the present rates are in excess of what would be necessary to give them a reasonable compensation? (Objected to by Mr. Denegre as leading.) If they were excused from any original construction, from spending money for any original construction, such as the electric light and such as the revetment levee and bulkheads?

A. You mean money incidentally——

Q. To give you the idea exactly——

A. The original construction would apply to the wood-work.

Q. Any wood-work of the wharves which was not in the nature of repairs. All this work, all this electric light, all this work, I contend, is original construction; cannot be considered anything else?

A. Well, the distinction there would be that the original construction applied to the wood-work of the wharves, and would be in the nature of necessary work in their maintenance, to which you do not accede, as I understood.

Q. For the purposes of this question I want to make this explanation: One of the points—I will explain to the witness one of the main points in this case is that, under the law, no tax can be laid upon commerce at all for an original construction, inasmuch as we contend that, under the decision of the Supreme Court of the United States, no municipal corporation is allowed to collect, in the shape of wharfage, any more money than would be a reasonable compensation for the use of structures antecedently belonging to the corporation. That is our main point in this case. Then, I understand, striking out the electric light, the sum set apart for building the bulkheads in the third district, $40,000 for police, wharfin-
263 gers, from your knowledge of the expense of keeping these wharves in repair, derived from the facts which you have already testified to, they can be kept in proper repair for the necessary purposes of commerce at a less rate than is charged in this lease?

A. That is my opinion.

Q. Do you happen to know, Major, what condition the wharves were in at the time the Eager-Ellerman lease commenced?

A. Yes, sir; made a personal examination, and caused a detailed survey to be made with a report of the condition of each and every wharf.

Q. I would be glad if you would state as briefly as you can how their condition at that date compared with their condition at the date of the inception of the Aiken lease, which was in May, 1881.

(Objected to by Mr. Denegre upon the ground that it has been given in evidence that an official report was made at the time that Eager, Ellerman & Co. took charge, and an official report made at the time that Joseph A. Aiken & Co. took charge. Those official reports speak for themselves, and are the best evidence obtainable as to the condition of the wharves at the dates therein specified, and the witness not having these reports before him his testimony must necessarily be vague.)

A. I cannot answer your question intelligently by reason of the fact that I have not before me the report of the condition of the wharves at the time that the Aiken lease was made. I had knowledge of the condition of the wharves at the time the Eager-Ellerman lease was made. Being out of office at the time the Aiken lease was made, I have not the data by which I could give an intelligent answer.

Q. State the condition of the wharves at the time the Eager-Ellerman & Co. lease was made: that is the one, as I understand,

that you made a careful inspection of at the time you made a careful inspection?

A. 20 of the wharves were in good order and required no
264 work, 17 required patching in places, 11 required rebuilding, 6 needed new flooring, 5 required repairs, amounting to 25 per cent. of the original construction; 8 required repairs amounting to 20 per cent. of the original construction.

Q. Were they not as a whole in an average condition—average bad condition?

(Objected to by Mr. Denegre as leading.)

A. They were in an average bad condition. I would state in that connection, as administrator of improvements of the city, I had only charge of the wharves for less than four months.

Q. Prior to that time?

A. Prior to the Eager-Ellerman lease.

Counsel for complainants now offer in evidence, after having examined the witness on the stand, his printed pamphlet, entitled "Remarks of E. A. Burke, administrator of improvements, to the city council on the subject of the lease of the wharves," which the witness says should bear date of about May, 1875, as part of his testimony and explanatory of what has already been taken, and tenders to the counsel for defendant the same for cross-examination.

Cross-examination to be continued at some future day.

Testimony Taken by Consent, on Behalf of Complainants, at the Office of Messrs. Kennard, Howe & Prentiss, New Orleans, La., Dec. 9th, 1882.

Captain ANDREW J. CARTER sworn by MARK BREEDEN, Jr., notary public.

Examined in chief on behalf of complainants by Judge KENNARD as follows:

Q. Where do you reside, Captain?

A. I reside in St. Louis, Missouri.

Q. What is your occupation?

A. Steamboatman—captain.

Q. For how long have you been engaged in that business?
265 A. I have been steamboating about 27 years.

Q. Between what ports?

A. St. Louis and New Orleans, and Memphis and St. Louis.

Q. What is your present occupation?

A. I am captain of the steamer "City of New Orleans."

Q. Did you ever have any connection with the "Scudder?"

A. Yes, sir; I built the "Scudder" and ran her for about 8 years.

Q. Between what ports did she run?

A. Between St. Louis and New Orleans.

Q. Are you familiar with the wharfage charges at the city of New Orleans, St. Louis, Cairo, Memphis, and Natchez?

A. Yes, sir.

Q. How do the rates charged at New Orleans compare with those charged at St. Louis, Memphis, Cairo, and Natchez?

A. Well, they are much larger than those at those places.

Q. Can you state with accuracy with regard to the charges at St. Louis and at New Orleans?

A. Well, we pay at St. Louis $20.00, I think it is. We pay in the city of New Orleans here ninety and some odd dollars; I forget now the exact amount.

Q. $92.40.

A. Yes, sir.

Q. Is your cargo, the cargo you handle in St. Louis, larger than, or smaller than, the one which you handle in New Orleans?

A. Generally larger.

Q. Larger in St. Louis?

A. Yes, sir; we put out a great deal of our freight between here and St. Louis.

Q. Before you arrive at New Orleans?

A. Yes, sir.

Q. Is the same thing true with reference to the cargo that you take to St. Louis from New Orleans?

A. Yes; we put out considerable before getting to St. Louis.

266 Q. Do you put out as large a fraction of cargo which you take on at New Orleans before you reach St. Louis as you do of the cargo which you take on at St. Louis before reaching New Orleans?

A. No, sir; we don't put out as much going up.

Q. What are the charges at Cairo?

A. I think we pay there for the round trip—I forget—$17.00, I believe, or $20.00; I forget now what it is.

Q. You have testified here it is $20.80 (referring to previous affidavit)?

A. Yes, sir; $20.80. I had forgotten the figures. I could have gotten the exact figures off the books.

Q. You got the exact figures when you made this affidavit?

A. Yes, sir; I got it then.

Q. How long can you lay at Cairo?

A. As long as we wish; one or two days; sometimes we laid there four or five days when we returned from there here; sometimes in the winter load there and return.

Q. Do you take on your cargo there sometimes?

A. We load there almost entirely sometimes during the winter season.

Q. What do you pay at Memphis the round trip?

A. Well, I really forget now; when I made that statement I had the figures.

Q. You can refresh your memory. This is sworn to by you—$40.00?

A. Yes, sir; that is it; whatever is there is correct.

Q. At Natchez?

A. $6.00, I think.

Q. The round trip?

A. Yes, sir.

Q. Put out a great deal of freight at Natchez?

267 A. Yes, sir; we put out from 200 to 400 tons on a trip at Natchez; that is one of our largest trading points.

Q. Against what do you land at Natchez. How is your landing made at Natchez?

A. Land alongside of a wharf-boat at Natchez.

Q. This charge that you have spoken of covers the entire charges?

A. That covers the city charge; we pay an agent there to attend to our business.

By Mr. DENEGRE:

Q. Are the charges testified to made by the cities—those you have seen charged?

A. Yes, sir; that is the city wharfage that I speak of.

(Mr. Denegre objects to the testimony on the ground that the city ordinances of the different cities fix the rates and are the best evidence of the charges.)

By Mr. KENNARD:

Q. You have been paying these charges a long time?

A. Yes, sir.

Q. How long?

A. Been paying wharfage always, but it has been reduced at some places very materially.

Q. Is the amount which you pay at these various cities ever been disputed—that is, have they ever claimed you have not paid the proper amount?

A. No, sir. Well, we have protested against paying the wharfage several times—at least we complained about it, and managed to reduce it some.

Q. How do the facilities afforded you in St. Louis compare with those in New Orleans for hauling, loading, and unloading freight?

A. Well, sir, the facilities are better there, in the city of St. Louis—that is, they are not crowded for wharf room as we are here. We have more room there to do our business.

268 Q. Is your freight any better protected?

A. Yes, sir; it is better protected. We receive our freight there under cover of the wharf-boat. It is hauled right aboard of the wharf-boat, close to our boat, which lands alongside.

Q. Is your expense for tarpaulins as great in St. Louis as it is here?

A. No, sir; not one-fourth, I don't suppose.

Q. Can you state the reason why it is not?

A. Because we don't have to hunt up tarpaulins.

Q. Because your freight is under cover without the tarpaulins?

A. Yes, sir.

Q. How about watching?

A. Watching is greater here.

Q. Why?

A. Well, we take our freight aboard the wharf-boat; it is hauled down there; we don't take it and store it on the wharf, as we do here. Sometimes here we have our freight scattered for a square, all over the wharf.

Q. How about skidding?

A. Well, we, of course, don't pay as much for skidding.

Q. In St. Louis?

A. No, sir.

Q. Can you state the reason why that is?

A. The reason is that we have our freight under cover of the wharf-boat. We take it aboard as fast as it is hauled down, usually, because it is hauled to our stages, to the guard of the boat. The labor is a great deal less. We don't have to move it more than 20 to 50 feet off the wagons.

Q. How much less, taken as a whole, do you estimate that the charges in St. Louis are than they are here?

A. The charges for handling freight?

Q. Yes; for wharfage. The whole business, I mean. What
269 are the entire expenses, wharfage expenses, in St. Louis as compared with New Orleans?

A. Our wharfage expense is $20 there against $92.40 here.

Q. Is it not a fact that you sometimes in New Orleans have to carry your freight a good deal further—a greater distance than you do in St. Louis?

A. That is always the case in New Orleans. We do not have to carry it but a short distance in St. Louis. In St. Louis it is hauled right to the guard, alongside of the boat.

Q. How far in New Orleans do you have to haul it?

A. In New Orleans, sometimes it is about 50 yards to 75 yards.

Q. What is the general average of the distance that you have to carry it in New Orleans?

A. According to the ordinance they have here they claim that the wagons are not allowed to haul on the wood-work, though in fact, however, they sometimes do. I do not know that distance—the distance out to the dirt; fifty yards, I suppose, or more, perhaps 75; and then when we receive a great deal of freight they have to still drop it further out—that is, when they rush it down in a hurry.

Q. When you are compelled to put your freight beyond the planks are you compelled to use skids?

A. Yes, sir.

Q. Otherwise it would be damaged?

A. Yes, sir; that is, discharging freight.

Q. Yes. Are the chances of getting in when you arrive at New Orleans as good as in St. Louis?

A. Oh, no; nothing like.

Q. What does the difference consist in?

A. Well, when we get here sometimes we find the wharf so much crowded with steamboats that we have to land head on, crowd in. In that case we have only a narrow gangway and a very narrow
portion of the wharf to put our freight on, and we have to
270 go further out. I have had to lay outside here of other boats; could not get in for hours.

Q. And have to load across the other boats?

A. No, sir; not allowed to do that.

Q. But you have been so situated that you had to land with head on?

A. Yes, sir; when we would get in head on and the stern would stick out in the river and we would have only one gangway, that is forward. In St. Louis we lay broadside, and we unload much easier; in other words, have two gangways there. Here there is a great deal of labor, and we are allowed more room there.

Q. Do you derive any special benefit from what is known as the wharf police of New Orleans?

A. I don't know. No, sir; not a particle that I can see.

Q. Do they render you any service other than that which they render the other citizens of New Orleans?

A. I don't think they render me as much, if they render any of the citizens any.

Q. Do they render you any service in watching your freight?

A. No, sir.

Q. Do you employ your own watchman?

A. Yes, sir; we employ our own watchman.

Q. Well, as far as your freight is then concerned, is it a matter of any moment to you whether there is any police or not?

A. Not a particle.

Q. Has there ever been an occasion since you have been coming to this port that the services of the police would have been beneficial?

A. Yes, sir. I can cite one instance when we had a strike here on the wharf; the men, at least a part of the men, were willing to work, and a gang came along and stopped the men from working. The men were willing to work at 25 cents an hour, and those men came along and made them stop. They were willing to work for this amount, and they gave them an amount of money.

271 Q. What they call the longshoremen?

A. I believe so. I am satisfied if we had had a few policemen there we could have drove those fellows away and let the work go on.

Q. Did you have any of those policemen?

A. No, sir; no policemen in sight.

Q. How long did that condition of things continue?

A. Well, I don't know how long; they advanced the labor here, I think, to 40 cents an hour; I think it lasted, sir, a month or two months.

Q. Is it not to your knowledge that those strikes have occurred frequently in this port?

A. Yes, sir.

Q. Is it to your knowledge that they have been promptly put down by the police?

A. I have never seen the police around.

By Mr. DENEGRE: All this testimony taken subject to the same objection.

By Judge KENNARD:

Q. Now, with reference to the electric light, Captain, does the electric light confer any substantial benefit upon your steamboats?

A. No, sir; I don't think they have ever derived any benefit from it all; I am satisfied I have never done so.

Q. Do you unload principally by night or by day?

A. We unload by daylight.

Q. Is that more economical than unloading by night?

A. It is.

Q. You prefer it, therefore.

A. Yes, sir; we can get more work done by the men in the day time; have to pay them more money to work at night.

Q. When you have occasion to unload at night, would the electric light, as it is now on the levee, be sufficient for you to unload your boat, or would you have to use another light?

272 A. Have to use our own light.

Q. The electric light would not answer?

A. No, sir; it does not give us light on our boat or on the stage.

Q. Does not come far enough out?

A. No, sir.

Q. What is the distance from where your boat lands against the wharf; where would the nearest electric light be to you, if you were on an exact line with it?

A. Well, I do not know the distance; it is from the rear of the wharf; it is—I should think, though it was about 220 feet, is it not, Captain Kirk (addressing the gentleman present)? I expect he knows exactly; I do not know. I do not know the exact distance the electric posts are from the water. (Captain Kirk says, 125 feet.) Well, we cannot always be right opposite to the light.

Q. You know, without referring to the exact distance though, that, as a matter of fact, the electric lights are not necessary for your purposes to unload there.

A. No, sir.

Q. Is the electric light any special benefit to you in getting into the wharf?

A. No, sir; I do not consider it is; I know we have to use our own lights when we land.

Q. Then you do not consider the electric lights of any use other than as a luxury?

A. It may be a benefit to the citizens of New Orleans. I do not consider it a benefit to the steamboats. I suppose it is some benefit to the citizens of New Orleans, the same as it is in lighting the streets of the city. We do not want it, I assure you. I can manage to get out in time and back again, the same as I have done for forty years back, very well without it; the gas light is good enough for me.

273 Q. Is the space allotted to the steamboats in New Orleans ample for their purposes?

A. In some seasons, sir, it is not; we are very often crowded here for room—very often—right now, for instance.

Q. Right now? You have already stated that you are sometimes compelled to land outside of other boats.

A. Yes sir; just prior to giving this testimony (referring to previous affidavit) I had to land outside of a ship that was laying at the steamboat landing discharging ice.

Q. Where was that?

A. I could have gotten in—I could have got a broadside gangway and put my freight out much cheaper.

Q. Where were you landing then?

A. We were landing up about, I think, about the foot of Poydras street—somewheres along there; I do not remember exactly; it is in the steamboat landing for Western steamboats.

Q. There has been some testimony taken in this case on that point, and I desire to call your special attention to what the other side say with reference to this matter of facilities for landing and discharging of steamboats. Captain Ray testified that the facilities are as great, if not greater, here than in the city of St. Louis. Do Captain Ray's boats have any better facilities for landing than yours?

A. Yes, sir.

Q. Why?

A. They have a private wharf—a portion of the wharf set aside for them to land—and their boats go in there; they bring their boats in and lay their barges broadside to the wharf, and they are not subject to being crowded up as we are; another advantage in having a private steamboat landing is that they can discharge their cargo and leave it there on the landing longer than we can, simply because they have got a private place there to put the freight and there is nobody to complain but themselves.

274 Q. Captain Ray is the captain, I believe, of the "St. Louis, New Orleans and Mississippi Valley Transportation Co.?"

A. Well, he has been vice-president of it; he is a large stockholder.

Q. That is the line he is connected with?

A. Yes, sir; the "St. Louis and New Orleans Transportation Co."

Q. It was with reference to that that he spoke. If the facilities afforded you—if you had the same facilities—you would have no cause for complaint?

A. No, sir; I think not; if we had as much room as he has we would have room for much better landing, of course.

Q. Are other boats allowed to land there where this company's boats land?

A. I think not, sir.

Q. That is set apart for their exclusive use, is it?

A. I think so; that is my understanding.

Q. Then, it is not fair, or is it fair, to compare accommodations afforded the Mississippi Valley Transportation Company with those afforded ordinary steamboats?

A. I think not; we have to take our chance and land wherever we can; we are subject to being shoved out in the river, to draw up

our stages, our gangways, if any boat wants to land; we have to slack up our stern lines; then we are allowed to hold onto is the head line; no line except our head line; if a boat comes in under us we have to slack up the stern line and let her in.

Q. You have already testified, Captain, to a large experience in this matter of wharfage; I would like to ask you whether or not the charge for wharfage at New Orleans is in excess of an amount which would realize a fair compensation for the use of the wharves?

A. Well, I think it is; it is very largely in excess.

Q. You think it is very largely in excess?

275 A. Yes, sir, according to my judgment.

Q. Now, under the existing lease, which is known as the "Aiken" lease, the city has imposed, by the terms of its lease, the obligation on the lessees to pay $40,000 a year towards the police, $59,508 for bulkheads, and they are obliged to erect the electric lights which you see on the levee. Now, as a matter of business, if they had not been compelled to do these several things, would they not have been able to take it at a less charge and impose a less burden on commerce?

A. Undoubtedly they could have done that much less and made the same profit as they do now. That is a very singular tax to tax commerce for, certainly. We get along pretty well in St. Louis without the electric lights.

Q. Now, there is a claim made in this suit that the extra charges made here are justified, in a measure, by the special advantages which these lessees claim the steamboats have by reason of the assignment to them of a particular portion of the levee now used by steamboats. I would like to know what you have to — on that subject. The lessees claim that they are justified in making such charges as they do against the steamboats because of the great advantages that the steamboats have here over other ports in having a special portion of the wharf assigned to them. They say, because you are allowed to land between Poydras and some other street below, or whatever the limit is, that you have by reason of the assignment of that particular place so much greater advantages than you have elsewhere, that you ought to pay more for it?

A. I do not know; I cannot see where it is. It is for the accommodation of merchants that we land there.

Q. I am speaking of the advantages to your boats.

A. We land and put the freight out wherever there is any wharf space. The merchants would come there and give the freight to us. It is nothing to us.

276 Q. Do you have any sayso about designating the place where you ought to land?

A. No, sir.

Q. You are not consulted about it?

A. We are pointed out that place; that has been the steamboat landing for the last 50 years, I suppose—probably over.

Q. You are simply shown this station?

A. Yes, sir; we are generally shown it by the wharf-master where to land—what place to come in at.

Q. It is your opinion, though, that though you are assigned to that particular place sometimes you are deterred rather than facilitated by landing there?

A. Yes, sir; by having to land there, where the wharf is very much crowded, it is very expensive.

Q. Is there not a very great accumulation of steamboats at that particular point?

A. Yes, sir; sometimes there is; very much crowded.

Q. Are there any advantages known to you that the city itself derives from the fact that that portion of the levee is assigned to steamboats?

A. Yes, sir; I think they must derive a great benefit from it on account of the accretions there that occur at that point. The wharf, it fills up there, and the wharf is extended every few years. I don't know how often—some 20 years or so, perhaps—they make another street and sell the property, as I understand. It is very valuable property—the most valuable property in the city of New Orleans, I think.

Q. More valuable than the property opposite the other wharves?

A. Yes, I think so; more valuable than any property in front anywhere, I have been told; I don't know.

Q. Your idea is that the city gets back some money in that way?

277 A. Undoubtedly. I know there has been new blocks of buildings been built on the front, caused by accretions to the city wharves.

Q. Now, there is a claim made that the accommodations given to the steamboats at the wharves here are greater than those afforded to other crafts. Is that true?

A. You mean the shipping?

Q. Yes.

A. I don't know. I can't see where it is.

Q. You can't see where it is; don't you know that it is not so?

A. Well, not having any ships or anything of the kind, I don't pretend to know what these advantages are, but I see them lying broadside at these docks or wherever they land; they have a broadside gangway. I never seen a ship lying head on doing the work over the head, putting the cargo out as we do.

Q. You regard that as an advantage, laying broadside?

A. Yes, sir; a great advantage.

Q. You cannot lay your boat broadside?

A. Very seldom; we sometimes do in the summer, when there is not much to do, not many boats running; but when we need the room the worst there is less room on the wharves at the landing.

Q. I believe you have already stated that you have come into this port since the electric lights were put up?

A. Yes, sir.

Q. And that you do not consider them any advantage to you?

A. No, sir; I do not consider them any advantage. I can say this much, that they are a very poor light.

Q. A very poor light?

A. A very poor light as an electric light; they frequently almost go out. I have sat there at night and seen them almost disappear entirely; never have seen them go out entirely; but they are certainly the weakest excuse for electric lights I ever saw in my life. I can say that much for them.

278 Cross-examination by Mr. DENEGRE:

Q. Do you think that the accretions at the steamboat wharf are due to the fact that steamboats land there?

A. Of steamboats landing there?

Q. Yes, sir.

A. No, sir; I do not.

Q. Then what advantages does the city of New Orleans—what great advantage in that respect does the city derive from allowing the steamboats to use that wharf?

A. Simply because the accretions form. The land makes them and keeps making out until the city builds the wharves out and they sell the property.

Q. Would not the city be in precisely the same position as she is now if the steamships landed there instead of the steamboats?

A. Undoubtedly she would. I do not think it would make any difference in the accretions which would make there. If the ships landed there it wouldn't increase the value of the property as much as the steamboats running there.

Q. Why?

A. Because the steamboats do more business; they do a passenger as well as a freight traffic up and down the river; ships do not do it.

Q. Do not you know that the landing where the steamboats are is the landing nearest to all the merchants in the city of New Orleans?

A. Do all the merchants build houses close to that landing?

Q. I ask you if you do not know that it is the nearest to those merchants?

A. Yes, sir; if the steamboats had been landing at Jackson street the business part of the city would have been there, very likely.

279 Q. Don't you know that it is nearest to all the large houses in the city? Don't you know that it is nearest to the large business thoroughfares?

A. Yes, sir.

Q. You say that it is very valuable property alongside of the bank, and that the city of New Orleans derives a revenue from its sale. Now, is there not a very large open space of ground in front of the landing?

A. Yes, sir; but it is occupied by railroads; the city has given it to the railroads after we paid for it.

Q. Is there not a larger open space of land there than there is at any other point in the city of New Orleans?

A. Yes, sir; I do not know but what there is, and there is a very — large- amount of business done there than at another part of the wharf—I suppose ten to one; still they have not enough room.

Q. You say you land anywhere they tell you. Is there any other place in the city of New Orleans that you can land, do you remember, now, between the landing—between Poydras and St. Louis streets—where you can discharge your cargo as you do at your present landing?

A. I do not know that there is any other place that we can land.

Q. You say you land anywhere they tell you; that there is no great advantage conferred upon you by allowing you to land between Poydras and St. Louis streets.

A. It has only been the custom of steamboats to do our business at this landing for years.

Q. Is there another place that you can land and do your business?

A. We can land anywhere wherever we can get to the wharf.

Q. Name the place—name the localities.

A. Well, I have not been looking for any.

Q. Do you know of any?

A. I do not know of any, because it has been the custom to land there. They have not prepared any other place.

280 Q. Do you know of any other place in the city where there is a large enough open space of ground to accommodate the immense cargoes that are put off and on the steamboats?

A. I know that boats have not been able to land at their regular landing. I had to go up to and discharge their freight way above the steamboat landing.

Q. Where is that?

A. Up at Thalia street; very often the case.

Q. Do you know who owns that ground up at Thalia street, where you put off your cargo?

A. No, sir; I do not know.

Q. Do you know whether it is owned by the city or not?

A. I do not know.

Q. You have stated just now that you considered the rates charged here are largely in excess of a fair and reasonable charge. Have you any knowledge with regard to the receipts from wharfage in this port?

A. Well, I have some knowledge. I know what I have been paying out here.

Q. Have you any knowledge of the gross receipts for the lessees?

A. No, sir.

Q. Have you any knowledge of the expenditures they are called upon to make?

A. I do not know what the expenditures are.

Q. Have you any knowledge of it?

A. I have some knowledge of what money has been spent on the wharves where we land—where the western steamboats land. I have been watching that for the last ten or twelve years.

Q. Have you any knowledge of the length of time that a wharf usually lasts in this port?

A. Well, I do not know. I think the wharves will last ten years.

Q. The wharves will last ten years?

281 A. Yes, sir; with a little repairs, of course.

Q. You refer to the steamboat wharves?

A. Yes, sir.

Q. Have you any knowledge of the length of time which the ship wharves last?

A. Well, I do not see why they should not last as long as the steamboat wharves, unless it is washed away.

Q. Have you any knowledge of the proportion of the river front of the city of New Orleans where the bank caves, and the proportion where the bank gains?

A. Yes, sir.

Q. What is the proportion?

A. I think it is that the gain is much larger the caving.

Q. Have you any actual knowledge of the matter coming from observation?

A. No, sir; only by looking out as I passed.

Q. You say that steamboat wharves will last about ten years?

A. I would judge so, with a little repairs.

Q. Is that based upon any actual knowledge of yours?

A. I have never had any experience in repairing them or building them.

By Judge KENNARD:

Q. You have seen the repairs going on, though?

A. Yes, sir; I will tell you what I do believe. At the wharf where we land I do not think that there has been 10 per cent. of the money expended on the wharves for the last ten years that we have paid wharfage; that is what I believe.

By Mr. DENEGRE:

Q. Captain, if the city of New Orleans were to sell the portion of the levee, the portion of ground in front of the steamboat landing, all that portion except up to within 20 feet of the wood-work of the wharves, how long do you think it would take—how much longer do you think it would take you—under the condition you

282 have stated, the crowded condition of the wharves at this port, to unload your boat?

A. If they were to sell it?

Q. If they were to sell it within 20 feet of the wood-work, and you only had the wood-work and 20 feet of the land to discharge your freight, could you, taking into consideration the crowded condition of the wharves at this port, do it?

A. We could not put our cargoes out on that; all the steamboats that run here could not do it, because there is not room enough now.

Q. How much do you pay for a wharf-boat in the city of St. Louis.

A. We own a wharf-boat.

Q. Does not the city of St. Louis furnish the wharf-boat?

A. No, sir.

Q. How long have you owned this wharf-boat?

A. You mean our company?

Q. Yes.

A. Well, I don't remember now; owned it several years.

Q. Do you remember how much you were charged for the use of the wharf-boat prior to the time you became the owners of this wharf-boat?

A. We were not charged for the wharf-boat.

Q. Who furnished it to you?

A. Well, it belonged to some gentlemen, and we paid them an agency.

Q. You paid them an agency?

A. Yes, sir.

Q. The city never furnished the wharf-boat?

A. No, sir.

Q. Do you pay anything for the privilege of your boats laying there?

A. We pay a tax, a property tax, I think.

283 Q. Do not you pay wharfage on the wharf-boat to the city?

A. I think not.

Q. Are you sure of that?

A. I think we pay a tax to the city.

Q. You pay a tax on property the same as on all other property in St. Louis?

A. Yes, sir; and we have been paying a property tax on steamboats.

Q. Can you state positively as to whether the wharf-boat belonging to your company pays wharfage?

A. No, sir; I cannot say; we pay a tax; I do not know how they enter it, whether it is wharfage or a city tax.

Q. Do not you know, as a matter of fact, that under the ordinance of the city of St. Louis the wharf-boat is called upon to pay wharfage?

A. No, sir; I know we pay a tax; I do not know where they put it; never inquired; but it is a very small one—pay so much a year; it amounts to very little.

Q. Do you discharge and receive your freight at St. Louis on the wharf proper or on the wharf-boat?

A. We receive it on the wharf-boat.

Q. Can you make use of that wharf in the city of St. Louis without paying for the wharf-boat?

A. Can we do what?

Q. Can you make use of the wharves in the city of St. Louis for the purpose of your business without the wharf-boat?

A. We can do it; yes, sir.

Q. You can? Is not that a sloping landing there?

A. Yes, sir.

Q. Very steep?

A. No, sir; not very steep; very easy grade.

284 Q. How long would it take you to discharge a cargo such as you take on at this port on that wharf if you did not have any wharf-boat?

A. Well, I think we could do it quicker than here, because we have more room—more wharf room.

Q. Do you mean to say that the space in front of the landing there is greater in the city of St. Louis than it is in New Orleans?

A. I think it is.

Q. The distances between the houses and river front and the water is greater?

A. Well, yes, sir; it is different at different stages of the water, but we can go up and down the wharf; we can go up and down the river further there.

Q. Then, when you say that, you mean that the wharves are not so crowded; therefore you have more space in the length of the wharves, but you do not mean to say that the wharves are deeper?

A. Yes, sir; it is deeper in low-water stages than it is here.

Q. The distance from the river to the houses?

A. Yes, sir; in low water.

Q. How often does the stage of the water there, in St. Louis, prevent you from discharging at all?

A. Well, we never have that; we always discharge our freight.

Q. Are there not stages of the water in which you cannot discharge unless you had a wharf-boat?

A. No, sir; it is only recently that we had wharf-boats; there was steamboats running there for years and years without wharf-boats.

Q. Was not navigation closed there for two or three days last year in extreme high water; that is, were you not able to discharge at all on account of the high water?

A. Not to my knowledge, sir; our boats came and got their freight on time; never missed sending a boat out that I remember, only in the ice.

Q. I mean without a wharf-boat. Are there not times at
285 which you cannot discharge on that levee without the intervention of a wharf-boat?

A. No, sir.

Q. Then I understand you to state——

A. Not while I was there.

Q. I understand you to say positively that there is no time in the city of St. Louis that you cannot discharge your freight without the intervention of a wharf-boat?

A. There has been a time when there was an overflow that it was all over the wharf; but that has not been very recently.

Q. I understand you to say that, as a matter of fact, at no time during the year in the city of St. Louis are you unable to do without a wharf-boat?

A. What year do you mean?

Q. Well, I mean year in and year out.

A. I will answer this way: I will say that we have been steamboating there for years and years without any wharf-boats.

Q. Years and years? Now, have you not known some years that you could not discharge without the use of a wharf-boat?

A. I remember in 1844 that the boats had to land up on the streets,

put the stage up on the street; that was an overflow; that was during the flood. It is the same here last spring; I had to put double dunnage under my freight in order to keep it out of the water; that happens here as well as in St. Louis.

Q. Are not the wharf-boats used by all the steamboats that run to St. Louis?

A. No, sir; there are some that have no wharf-boats.

Q. The larger proportion of them use wharf-boats?

A. The steamboats are in companies; where there is a company they have a wharf-boat usually.

Q. If you can get along so well without a wharf-boat, why use one?

A. Because we can get along better with one.

286 Q. How much does your company pay for the wharf-boat, do you know?

A. No, sir.

Q. What are its landing dues?

A. I don't know.

Q. You don't know how much?

A. No, sir.

Q. You pay no dues or anything of that kind?

A. No, sir; I don't think we pay any.

Q. Don't the boats that land there all contribute towards this expense?

A. We pay an agency there, sir; the same as we do in New Orleans.

Q. What do you mean by an agency?

A. We pay, the company says, an agent; they have to hire agents; we have to hire agents to solicit freight.

Q. I don't refer to that; I mean with reference to this wharf-boat?

A. Our office and the office of all our agents are on the wharf-boats. We employ a good many men to attend to our business, discharging clerks, etc.

Q. What is the wharf in the city of St. Louis constructed of?

A. It is constructed of stone.

Q. Right down to the water's edge?

A. Yes, sir.

Q. That seldom needs any repairs?

A. Very often it does.

Q. To what amount?

A. The stone will wear out in holes; have to take it up and put in new; very often it is the case—good deal of expense about keeping the wharf up in St. Louis; very heavy hauling there.

Q. You say that in St. Louis the wharves are not crowded to the extent that they are here?

287 A. No, sir; I say that we have got more room there than we have here to do our business.

Q. Is it not the fact that it is due to the commerce in favor of this port?

A. It is due to the city; they give us more room in St. Louis.

Q. Don't you know, as a matter of fact, that the city of St. Louis

have not as many miles of river front as this city has within its limits?

A. I don't know anything about the miles of river front, but I know the amount of improved wharf.

Q. Are there any ships that go to the city of St. Louis; are they not all steamboats that go to the city of St. Louis?

A. Yes, sir.

Q. Then the whole room is given to the steamboats?

A. Yes, sir; the steamboats, barges, and rafts.

Q. No ships, no ocean vessels are there?

A. I have never seen a ship there.

Q. You have said that ships are discharged broadside here. Don't you know that a ship cannot discharge over its head like a steamboat?

A. If they had no other landing they would manage to get it out the same way we do.

Q. Don't you know it cannot be done?

A. It can be done.

Q. Over the bow?

A. Such things can be done; it would cost them a great deal of money, no doubt, but it can be done. We could discharge over the head, but it is very expensive; this thing of can't be done is something that I never saw yet.

Q. When you say you discharge over the head of your boat you mean you discharge over the forward gangway?

A. Yes, sir; I mean over the bow, not over the jackstaff;
288 but we have to put the stage right to the left of it and run out almost straight out forward in order to get out.

Q. Captain, what do you consider to be the best steamboat landing in the city of New Orleans?

A. There is but one that I know of, best or worst.

Q. There is but one that can be used as a steamboat landing?

A. Well, there is but one that is used as a steamboat landing.

Q. I ask you which do you consider to be the best point along the river for steamboat landing?

A. Well, the landing where we land is the best, I should think.

Q. Now, you say that you employ your own watchman, that you don't derive any special benefit from the river police?

A. No, sir.

Q. If the wharf police were inefficient you would need watchmen, then?

A. Yes, sir; anyhow I don't think we would have much freight if we had to depend upon other people to watch it, especially the New Orleans police.

Q. When I understand you to say that the electric lights are of no benefit to you, do you mean to say that you don't need any light at all on the river front at night.

A. We need light on the front; of course we need it when we land, but we have to produce it ourselves; we have to furnish it.

Q. What I mean, Captain, is along the river; is some light not needed, of some kind, at night time?

A. Well, we have always had light—had gas lamps; they got along very well for the last 50, 60, or 75 years with them.

Q. What you mean is that gas is sufficient?

A. Yes, sir; I think it is.

Q. Don't you think that the electric lights——

A. If the city wishes to furnish the electric light on the street why we have no objection, but we don't care about paying for it.

289 Q. Is not some light on the river necessary to enable your watchmen to watch your freight?

A. Yes, sir.

Q. Is it not necessary to enable you to take proper care?

A. We furnish it.

Q. Of all the freight aboard and alongside of the river. It gives you light all over the water, so that you can see an approaching boat?

A. What kind of a city do you live in?

Q. I live in the city of New Orleans. Do not you use the electric light on your own boat?

A. Yes sir; but not in port, we don't.

Q. Not in port?

A. No, sir; only to land; we use it to make a landing. When we get in and land we put it out.

Q. What did you use before the electric light?

A. Torches.

Q. Why did you change?

A. Change? Not because we wanted them in New Orleans, but because they are so much better along the river in landing; it gives more light than a torch, and we can see with it those loose snags in the river.

Q. Don't you use that electric light in making a landing in the city of New Orleans?

A. Yes, sir.

Q. Your electric light?

A. Yes, sir.

Q. You state that once you landed alongside of a ship that was unloading ice here—landed on the side of her; is that right?

A. Yes, sir.

Q. What kind of a ship was that—a regular sea-going vessel?

A. Yes, sir.

Q. Was she at the steamboat wharf?

290 A. Yes, sir; two of them.

Q. The wharf set apart for steamboats?

A. Yes sir; the wharf set apart for steamboats.

Q. What kind of electric light is yours—what system?

A. Mine is the Brush light.

Q. Captain, are not contravention clerks and wharfingers necessary?

A. I don't understand you.

Q. Are not contravention clerks and wharfingers necessary on the river front for steamboats and ships?

A. Clerks?

Q. Contravention clerks?

A. I don't understand you. (Definition of contravention clerks explained to witness). If we don't need to have somebody to have the freight removed off the wharf?

Q. Yes. Now, I understand you to say that at St. Louis you load and unload faster because the wharf was cleared much sooner?

A. Because the wharf was cleared much sooner.

Q. That is, I understand you to say that the freight came right down into your boat?

A. Yes, sir; they haul it to the boat; they don't drop it a hundred yards away from the boat.

Q. Is not that the difference between the styles of doing business between the merchants of New Orleans and St. Louis?

A. Yes, sir; they take and haul it right to the boat, instead of dropping it in the city, at any street; the style is much better, I think; it is a great deal cheaper than the style here, if you call it style.

Q. How long does it take you to discharge a full load of cotton here?

A. We don't carry cotton.

Q. Don't you carry cotton down the river?

291 A. Very little.

Q. How long does it take you? What is the quickest time in which you can discharge a full cargo of freight brought here, when pressed for time?

A. I don't remember; we never bring a full cargo here; we put out half of our freight on the way usually; there is a great deal of difference in that here; sometimes come here and the wharf is not crowded, and we put out our freight reasonably quick; other times we are a long time at it; we have to wait until the merchants haul the freight away in order to get room; I have had to quit entirely—had every space filled up, until they hauled some of it away—before we could go ahead.

Q. Are not the wharfage charges here at the present time less than any time since the war, to your knowledge?

A. Less?

Q. Yes.

A. I don't think there is any difference in the last ten years; I don't remember; I think it is about the same.

Q. Do you remember it at all—what the charges were in 1873 and 1874?

A. I think the same as they are now, if I am not mistaken. Are they not the same thing, Captain Kirk? (Addressing a gentleman present.) 1872 I was not here.

Q. Now, how about before the war; do you remember?

A. I did not steamboat before the war.

Q. Captain, from a knowledge of steamboating, do you think that the "Natchez," the "White," or the "Ed. Richardson" could discharge their cotton cargoes during the busy season, at the wharf in St. Louis, and make their weekly trips?

A. Do I think that they can do it?

Q. Yes.

A. Well, they could discharge their cargoes there.

Q. And take on their cargo and make their weekly trip?

292 A. I don't know that they could make their weekly trips, because they have not that kind of a river.

Q. I mean, in twelve hours, discharge their cargo?

A. Could they discharge in St. Louis in twelve hours?

Q. Yes.

A. I think they could if they had enough men to do it.

Q. With the same number of men that they use here?

A. With the same number of men, but they could not do as they do here. We handle cotton in St. Louis with trucks altogether. Of course we have not the level wharf in St. Louis; it would be uphill a little—upgrade; but we discharge a great deal of freight in St. Louis.

Q. How long are you allowed to have the freight on the wharf in St. Louis?

A. I don't know, really, sir; the merchants generally haul it away as quick as we get it out. We have got plenty of wharf room; we don't have to fuss with the merchants to haul the freight away; we have plenty of room, and time to haul the freight away; we never hear of wharfingers hauling the freight to store; here the wharfmaster has to put the freight on the drays and haul it away and put it in store.

Q. Is that not owing to the larger business that this city does?

A. I think it is owing to not having wharf room; that is my experience.

Q. Have you ever made any calculation of how much less per package you could charge if you paid no wharfage rates at all here?

A. No, sir; never did.

Q. How long, generally, are you unloading your boat here with a full load—that is, a full load of such goods as you bring here?

A. Well, it takes between twelve and fifteen hours; sometimes less, owing to the facilities.

293 Q. How long are you unloading your boat in St. Louis, when you go there with a cargo?

A. Well, I suppose about the same time, if we have the same amount of freight, perhaps a little shorter time; we don't have to take it so far; don't have to put it out, roll it so far as sometimes we do here.

Q. What would it cost you extra to unload if you could not have the full length of your boat approaching the wharf?

A. There are times that it costs double what it would if we had plenty of room. I think double the amount.

Q. How many packages of freight is your average load?

A. Well, the amount of freight we carry—I think we carry about 20,000 packages, I think, for a full load.

Q. Have you been detained during the present season by any defect in the wharves?

A. What do you mean? Detained by not going out.

Q. By any defect in the wharves or the levees owing to the bad condition of the wharf or the levees this season.

A. No, sir; not this season; I have not.

Q. Did you always go out on your advertised time?

A. No, sir.

Q. This season?

A. No, sir.

Q. How many times were you detained?

A. Well, I think I was once or twice, perhaps.

Q. To what were they due?

A. It was not due to the wharves; it was due to our coming in late.

Q. How do you load and unload at Cairo?

A. We don't unload at Cairo; we carry very little freight to Cairo; we take on cargo there; we put our freight there, too, when we have it, sometimes in the winter.

294 Q. Do you think that the wharf charges have any material effect upon the prices of carrying freight?

A. Undoubtedly; all expenses figure in carrying freight; if we had our expenses left off we could carry freight cheaper.

Q. Do you think it makes any material difference what the expense of the wharfage is?

A. That is one of the expenses of running a steamboat.

Q. How many thousand packages? You say 20,000 packages make a full load for your boat.

A. About that; the packages vary.

Q. Now divide 20,000 packages into $92.40, and again into $20, and what is the difference per package?

A. I guess it is divided; it comes in always the same; there is an item there; you will find it every trip, too; it is a pretty big one, too.

Redirect examination by Judge KENNARD:

Q. Captain, putting together the expenses which you pay for agents and the expenses for wharfage in St. Louis and in New Orleans, making a lump estimate, which is the most expensive, which port? (Objected to by Mr. Denegre upon the ground that the Captain has stated that he does not know what his expenses in St. Louis are for a wharf-boat.) You have stated, as I understand it, Captain, that you pay $20 a trip for wharfage?

A. Yes, sir.

Q. The other expense that you paid, is it in the shape of an agency?

A. Here?

Q. My question is: That you paid this $20; that is all paid as wharfage proper in St. Louis, and the expense you are at for an agent. Now add again the expense in New Orleans for wharfage and the expense for an agent in New Orleans, which is the most expensive?

A. Well, this is the most expensive.

295 Q. By what?

A. Our expenses are much larger here, our wharfage and our expenses, than in St. Louis.

Q. How much greater are those two items here than in St. Louis?

A. Well, I do not know really how to figure that, unless I was to post myself on it.

Q. It is very much larger, is it not?

A. Yes, sir.

Q. Very much larger? I understand that where boats pay a property tax in St. Louis they are not compelled to pay——

A. That has been the case; yes, sir; I have paid a property tax on the "John A. Scudder" after I built her; for some time did not pay any wharfage.

Recross-examination by Mr DENEGRE:

Q. Captain, are you one of the owners of the "Scudder?"

A. No, sir; the "Scudder" belongs to a company.

Q. Are you one of the stockholders of that company?

A. No, sir.

Q. Your knowledge, then, is not derived from the books of the company, but derived from your knowledge as captain of the boat?

A. I was a stockholder in the "John A. Scudder," and I sold out to the Anchor Line.

Q. When you owned the "Scudder" did you pay anything to the wharf-boat, did I understand you to say?

A. I paid an agent there, when I hired one to get me a trip.

Q. You paid an agent to get you a trip?

A. Yes, sir.

Q. What connection had the agent with the wharf-boat?

A. He was manager of the wharf-boat part of the time.

Q. Who owned the wharf-boat?

A. The wharf-boat belongs to a company.

Q. Whence did they derive their revenue?

296 A. They derived their revenue by charging the boats.

Q. For the privilege of landing alongside of her?

A. Charged it in the shape of an agency.

Q. What was it they paid; what did you pay for the agency?

A. Well, it was different prices, sir.

Q. Can you show us how much you actually paid?

A. No, sir; I cannot.

Q. Have you got books of yours of that time which will show?

A. No, sir; I have not.

Q. Then you have no actual knowledge?

A. It varied; different prices.

Q. Then you have no actual knowledge now derived from the books of the "Anchor Line Company" which will lead you to state exactly, then, expenses for wharfage?

A. I have no books of the company: the books were all laid away; her books was.

Testimony Taken by Consent, on Behalf of Complainants, at the Office of Messrs. Kennard, Howe & Prentiss, New Orleans, La., Dec. 18th, 1882.

E. A. BURKE.

Cross-examination by Mr. DENEGRE, of counsel for defendants:

Q. Major, I notice in your affidavit on page 8 that you have an estimate of $20,000 for expenses for collection, etc.; what does that include?

A. The collection of revenues and supervision of wharves whilst under the control of the department of commerce. That estimate represented the expenses of supervision and collection of revenues.

Q. In your estimate made here the other evening you left out of consideration entirely the expenses for collection and the force which the wharf lessees would be obliged to employ to run their business; what do you suppose would be a fair estimate of that?

A. I should judge about $12,000 a year.

297 Q. $12,000 a year?

A. The items there are divided between supervising—the parties supervising the distribution of freight on the place of landing, etc.—and the parties that were formerly engaged in the collection of revenues.

Q. In your estimate here the other evening you estimated that the wharves would deteriorate about 20 per cent. per annum from wear and tear. I see that in this affidavit you have an estimate of 25 per cent. for the same thing.

A. The estimate made here and the one made the other evening *they* are upon different bases; if you will observe, this one involved—this one involved——

Q. Say the old one.

A. The old estimate was based upon a proposition to fill such a portion of the wharves, of the landings or batture—rather such a portion of the batture—as might be filled and graded, and permanently redeemed from wood-work. I should say that if that plan was pursued, and a portion of the batture was filled for the remaining part, 25 per cent. estimate would be a fair estimate; this 20 per cent. estimate was based upon the wharves as they are now built, extending back where the wear and tear is not so great in the interior—that is, the caving banks; the exposed part of the wharves is the outside portion. It would be more expensive, in other words, in proportion, to maintain a wharf, say, of a hundred feet long and only 20 feet in depth, than it would a wharf one hundred feet long and one hundred feet in depth. The expense would be greater for that exposed portion.

Q. Is your estimate you made here the other evening based upon the figures you had in your affidavit upon the same basis?

A. The estimate made the other evening was not made upon the proposition for filling the wharves—filling the battures.

Q. It was not made upon that basis?

A. No, sir; you will observe there is a very considerable
298 difference. This old statement represents the position that I held upon that question and at the time that I was administrator, and is the proposition that I presented in case the control of the wharves had remained with the city, and looking towards reducing that quantity of wood-work from year to year that would be required.

Q. That was on the calculation that the entire wharves would require rebuilding once every 5 years?

A. That is the accepted estimate, I believe, amongst the builders.

Q. Now, you made an estimate of $200,000 for police for 5 years—police and contravention clerks?

A. For the purpose of my estimate, I accepted the amount that was stipulated in the contract.

Q. Now, you estimated your repairs upon the basis of 14,000 superficial squares; therefore, if the superficial squares is greater than 14,000, your estimate would be increased for just as much, would it not?

A. Yes, sir; I was speaking approximately, and based it upon the old surveys.

Q. Now, in estimating your revenues, you based that estimate upon the charges in the Ellerman lease, did you not?

A. In estimating the revenues the estimate was based upon the actual receipts in former years—from the best data I could gather.

Q. The years that Ellerman had this lease?

A. Prior thereto.

Q. Prior thereto also?

A. Yes, sir; in fact it was based upon an examination of the revenues from 1852 up.

Q. Major, is it not true that the revenue from the wharves do not vary, increase or decrease, in proportion to the number of wharves there are—that is, is it not due to the commerce of the port rather than to the number of the wharves?

A. Well, as a question of fact, that would be the case, but
299 I would think that the commerce of the port would increase if the facilities were extended.

Q. What I wish to arrive at is this: Would not the expenses—the expenses of the city or of the lessees, whichever happened to run the wharves—be increased more largely from having the larger number of wharves than their receipts would be increased proportionately; do you understand what I mean?

A. I don't think that I do.

Q. Well, the larger the number of wharves the greater the expense to which the lessees are put?

A. Yes, sir.

Q. Well, now, would the revenues increase in proportion as the expenses increase?

A. That would depend upon the provisions of their contract, because they might be required to construct more wharves than was necessary for the purpose of commerce. That depends more upon the terms of the contract than it does upon the shipping. As I

understand, the lease specifies distinctly certain work which they are required to do.

Q. Well, now, taking the wharves you have, if you had a larger number of wharves the annual expenses would increase more in proportion than your receipts would increase?

A. Oh, certainly, sir.

Q. I ask you that question because you made a calculation here of the revenues derived from the wharves, basing it upon the area of 14,000 superficial squares. You said afterwards that you thought, taking into consideration what had been given away to the rail-railroads, that the area of the wharves bringing a revenue would be the same as it was at the time you made your estimate.

A. I was under the impression there had been a slight increase; I think my former estimate was based upon 13,326 squares; and I was under the impression that the new wharves constructed under the requirements might bring it up, considering those that
300 had been given out might bring it up—bring the area up to 14,000 squares. I had not had occasion recently to examine carefully the additions that had been made.

Q. In your estimate you have $125,000 a year for new wharves. Are you aware that under the present lease there is a provision calling upon the lessees from year to year to join the different wharves, and that they are not credited by that new work; that they are not credited with that work as new work?

A. I was not aware of the fact that it was not credited as new work. I knew they were required to build $25,000 a year of new work.

Q. Well, that would make a material difference in your estimate?

A. It would make a difference to the extent of the increased area of wharves that was required to be built.

Q. Now, in the former leases the lessees were only called upon to rebuild wharves in case of ordinary wear and tear. They were relieved from rebuilding the wharves from any damage caused by extraordinary storms or by the act of God; but the present lessees are called upon to rebuild the wharves in any event, whether it be from an act of God, from wear and tear, or human agency. Would not that make a vast difference?

A. I never so regarded that the former lessees were relieved from rebuilding in case of storms.

Q. That is the provision in their lease?

A. Well, I think that is a question of construction.

Q. No, sir; it is there in so many words *it is there in so many words*. That would materially increase the burden of the lease, would it not?

A. The term may have been used, act of God, but——

Q. No, it is very plain.

A. I know that was a question very fully discussed, that question; and I always held that the ordinary storm was, so far
301 as the injury from storm—it was certainly an injury for which the lessees were responsible. I don't know what the decisions have been upon it.

Q. Mr. Ellerman testified the other day——

A. Mr. Ellerman had a contest of that kind, but how the courts decided I don't know.

Q. And he won it, too.

A. But I know the position I held as administrator, and subsequently held in the newspaper, was based upon that theory. I never so considered that the lease did exempt them from storms.

Q. In making your estimate did you take into consideration the fact that the present lessees decrease, are called upon to decrease, their wharfage rates 10 per cent. for the third year, 20 per cent. for the fourth year, and 20 per cent. for the fifth year?

A. I considered that decrease, and against that regarded it as more than offset by the probable increased tonnage of the port in the course of that time.

Q. Don't you know, as a matter of fact, that the tonnage has not increased?

A. Well, I know there has been a very considerable change in the character of the tonnage; but what has been the exact figures—I have not examined the estimates; but the change in the class of vessels may have been—may have worked the change in the tonnage. But, so far as this future estimate which I speak of, it was based upon all the probabilities; the construction of railroads; the selecting New Orleans as a terminal point; the building of the jetties; all of those things, in my judgment, would produce, will produce, a vast increase in the tonnage of this port by the time those reductions would be enforced.

Q. When you made your estimate, Major, did you take actively into consideration all the additional obligations that were made in this lease over the former rates of wharfage?

A. I did, so far as I read them.

302 By Judge KENNARD:

Q. I read them over to you.

A. Yes; they were read to me—at least, by Judge Kennard—the other evening.

By Mr. DENEGRE:

Q. You then figured upon what your general knowledge taught you with reference to the tonnage coming to this port?

A. Yes, sir.

Q. Have you ever read this lease of Joseph A. Aiken & Co.?

A. I read it at the time of its adoption by the council whilst it was under discussion, and I have glanced over it since; have not read it very carefully recently. When the question was up under discussion, and before the lease was adopted, I had occasion to examine it very carefully, but after the adoption of the lease by the council, why, I didn't look further into the matter, and I have very little knowledge of its practical operations since the lease was effected.

Q. Did you take into consideration, then, in making your esti-

mate that the present lessees are obliged to extend the wharves out so as to secure a 25-foot channel for ships and a 12-foot channel for steamboats as against twenty and ten, as required in the former lease?

A. I did not.

Q. Would not that make a difference in their expenditures?

A. Not a very large one.

Q. To extend the wood-work out so as to secure——

A. That was only to secure a channel. They might either extend the wood-work out or dig away the earth, which is the course, I think, they pursued.

Q. It would put them to more expense?

A. It would put them to additional expense; but I believe the expense is not so large in proportion.

303 Q. Now, I call your attention to another difference between the Ellerman lease and the present lease. In the Ellerman lease Mr. Ellerman is called upon to build new wharves when necessary, and Aiken & Co. are required to build $25,000 of new wharves absolutely each year; would not that make a difference as between the expenditures to which the two lessees were put?

A. Well, I don't know what the council required of them, but the purposes of commerce would have required them to build at least $25,000 of additional wharves, so that the two leases would have been identical in that respect. I cannot say as to the question of whether the council did require that of Mr. Ellerman. I believe, from my recollection of that lease, they were obliged to do it. They were required to build $25,000 of wharves if the city council required them to do so.

Q. Yes; but the present lessees are required to do it absolutely.

A. Well, taking the two leases into consideration, I would regard them as identical in that respect, unless the council had failed to do its duty.

Q. From your practical knowledge of the workings of the city administration and of the operation of these public contractors would not you consider that there is a very material difference between the two clauses; that one is very much more onerous than the other?

A. Well, that would be a fact to be ascertained by a comparison of the actual amount that they had been required to pay out under the former lease. It is presumed that a public officer will do his duty—that is, what he is sworn to do—and the law requires it of him and I won't assume that he would neglect it.

Q. Suppose you had a contract, would not you consider that you were much better off in having the provision in the Ellerman lease than in having the provision in this lease?

A. Well, it would depend very much upon the class of officers that I had to deal with; I think that will answer that question.

304 Q. The provision that the lessee shall build new wharves when necessary allows a great deal more discretion, does it not, than if he is to build them when ordered by the council?

A. The discretion rests with the council; the discretion in former

leases rested with the council, of course, to the extent that the lessees had in it.

Q. It is not so stated in the former lease.

A. When necessary and the council shall so decide. The language used on that point in my first report was "that the interest of the contractor ever lies in avoiding his contract, thus decreasing his expenses and increasing his profits, and the true remedy seems to be in the selection of faithful and energetic officers."

Q. Now, Major, you stated here, the other day, that you considered 6c. per ton would be fair to charge steamboats, and that anything over and above that you would consider excessive. I would like to know how you arrive at that calculation?

A. At the time that my judgment was formed about the rate on steamboat and steamship tonnage I took the average tonnage; I forget the figures now; I, perhaps, have them some place about my office, and I think I figured upon the basis of six cents a ton for steamboats, and, I think, some 12 or 13 cents a ton for steamships. I thought that that result would about balance my estimate of the expenses, on the basis that I have heretofore explained of 14,000 squares, at the average rate of expense of maintenance, as stated in my former testimony.

Q. You have no knowledge of the expense to which the present lessees are put?

A. I have not, sir.

Q. Have you any knowledge of the present revenues.

A. I have not an exact knowledge; no, sir.

Q. Is it not to your knowledge that the increased amount of freight which has been handled by the railroads here and
305 the encroachment of St. Louis upon our river trade have decreased the number of steamboats dealing with this port?

A. Without any exact knowledge on the point, I should estimate that there had been a reduction of steamboat tonnage. I have not the facts before me.

Q. Major, when the Mississippi Valley railroad is built, running along the river from here to Memphis, don't you think that it will draw largely from the river trade?

A. Well, that is a question that I have thought over considerably, and I am of the impression that a very sharp competition will be inaugurated between the boats and railroads and that it will have the general effect of bringing a very much larger amount of freight to this port—much larger consignment of freight to this port. I think we will enter into direct competition with the trunk lines that are extending from the East to the West, and that the practical result will be to turn the tide of western productions and northwestern productions down to this port. In that event I am under the impression that the steamboats will find a compensation. They can always compete, in my judgment, against the railroads.

Q. As a matter of fact the Mississippi Valley railroad may carry a great deal of freight along the river?

A. Immediately along the banks; yes, sir.

Q. Is it not to your knowledge that the New Orleans Pacific rail-

road carries cotton and sugar and rice down here that used to be carried by the steamboats?

A. Necessarily so along Red river, but I think, if you will allow me, if it is proper in that connection to state, that whilst the New Orleans Pacific railroad brings from along Red river a considerable part of the freight that was formerly brought by the steamers, yet it also will bring to this port the productions of northern Texas, which will make a market for steamships.

Q. For the steamships?

A. Yes, sir.

306 Q. But not for the steamboats? It will hit directly; what I mean is, it will strike directly at the steamboat interest?

A. It affects the steamboat interest where it touches any portion along Red river, both of freight and passenger traffic, but so far as the general effect upon the port is concerned the vast increase in the shipments which will come in from northern Texas, its effect upon the shipping of the port generally, whilst it might be to reduce the steamboat tonnage very considerably, yet it will vastly increase the foreign shipping tonnage which comes to this port.

Q. As a matter of fact this result has not been reached yet?

A. It is being reached. The receipts are now coming in over the New Orleans Pacific railroad. They are bringing, I think, some 8,000 bales of cotton a day, if I mistake not, when they expected to bring in but 5,000.

Q. Your estimate of $308,000 for repairs, I understood you to say, a few months ago, would have to be increased for the number of squares over and above 14,000 which the lessees would be required to keep in order?

A. Yes, sir.

Q. Also have to be increased for extra work which they would be called upon to do under the obligations of the lease, which requires them to join the wharves? That would be another increase to be added on?

A. Yes, sir; it would be increased by any addition beyond the 14,000 squares, as estimated.

Q. Then your estimate, you say, was made, taking into consideration the reductions which will be made in this lease in the 3d, 4th, and 5th years, because you considered that the increased tonnage coming to the port will increase the commerce of the port and would compensate for that?

A. More than compensate for that.

Q. More than compensate for that?

A. Yes, sir.

307 Q. Therefore if, as a matter of fact, the revenues should continue for some reason or other to be about the same, then your estimate would have to be credited with the reductions in the lease?

A. Certainly.

Q. It is your idea, as I understand it, then, Major, derived from your general knowledge, that the tonnage which has come to this

port within the last year has been greater than that of the year before?

A. As I stated, I do not know what effect the falling off of sailing vessels, and what result the falling off of sailing vessel and the increase of the steam tonnage coming to the port has had. From my general knowledge, making a rough estimate, I think that there has been an increase, not in the steamboats, but in the general shipping. In other words, I should say that there had been a decrease in the steamboat tonnage and an increase in the tonnage of foreign vessels.

Q. Suppose you were told that Eager, Ellerman and Co. had derived $240,000 of revenue a year, and the present lessees only derived $202,000 for the first year of their lease—now, taking that as an estimate, would it not make a large difference in your estimate?

A. I should be very much disappointed——

Q. Well, it is a fact, a fact in evidence here—$202,000 for the first year.

A. Did that include everything that was due them that was in litigation?

Q. I believe it did everything, nothing in litigation, then; those were the actual receipts of $202,000. Major, have you any knowledge of the condition of the wharves when the present lessees took possession of them?

A. I had a general knowledge.

308 Q. Well, have you ever known in your experience the wharves in the 3d district and the 2d district to be in as bad condition as they were when these lessees took them?

A. I think, with the exception of two or three wharves in the 2d district, that there was not very much difference between the condition of those wharves when the new lease went into effect than when Eager, Ellerman's lease went into effect; they were in very bad condition in the lower part of the 2d district and in the 3d district under both leases at the commencement of both leases. We rebuilt the Cromwell wharf—I think it was at the time the Eager-Ellerman lease went into effect—and one or two other wharves in the 2d district. My recollection of the condition of the wharves at the time the present lease went into effect was that the wharves in the lower part of the 2d district, perhaps the whole of the 3d district, were in a very bad condition; they had been wrecked.

Q. You know they were in a worse condition than when Ellerman took them?

A. Well, with the exception of the Cromwell-line wharf and the two wharves that I spoke of as having been constructed by me as administrator of improvements, the situation would be the same at the time of the two leases, to the best of my recollection.

Q. Did you go down there at any time within about, say, 2 months after the present lease went into effect—the months of June and July?

A. I passed over the levee at the time that the lease was made, whilst the question was under discussion, and I saw the survey of

all the wharves, and have the reports some place about my office of their condition. I had a report upon the condition of each one of the wharves.

Q. With reference to the condition of the wharves when that survey was made, you say they were in about the same condition as when Ellerman took the lease?

A. My impression is they were in about the same con-
309 dition, with the exception of those in the second district, as I stated both times—in very bad condition.

Q. Did you see them 2 months after that, when the water had gone down low?

A. I cannot say.

By JUDGE KENNARD: I object to this cross-examination; I object to it as irrelevant. This lease was made upon the basis of the wharves at the time it was entered into. I object to it as irrelevant on the ground that the figures of the present lease were made with reference to the condition of the wharves at the time the lease was signed.

By Mr. DENEGRE:

Q. Major, don't you know from your experience that the wharves in the 3d district and the 2d district cost a great deal more to build and keep in order than they do in the upper districts?

A. I think they do—very much more. All my estimates were based upon a knowledge of that fact. I think, on an average, that the wharves uptown, I presume, would last—take an average—they would probably last or at least have to be rebuilt every once in, say, 8 or 10 years, whilst those away down below would have to be rebuilt every two or three years.

Q. All of these wharves are fastened to the land, are they not?

A. Oh, yes, sir; they are braced and bolted; they are bolted to the timbers; they are fastened to the land.

Redirect examination by Judge KENNARD:

Q. Do you or not still think that the estimate of 14,000 squares [is] a fair estimate of the amount of wharves to be kept in repair?

A. I still think so; I have had no fact brought to my knowledge that would increase the area.

Q. Have you any knowledge whatever of the amount of work lately done by the present lessees under the requirements of the lease to keep the wharves in repair?

310 A. I have no knowledge of the actual amount of work that was done.

Q. Is it not a fact known to you that within the past year or two that the police force of the city of New Orleans has been particularly inefficient?

A. It has been largely inadequate to the wants of the community and has been gradually deteriorating.

Q. And has been reduced in numbers since the time you were connected with the city government?

A. Yes, sir.

Q. Has it not also been reduced in its morale?

A. I think necessarily so, from the fact of the city failing to meet its payments; if the police would be badly paid the city would receive poor service.

Q. Do you happen to know what was the average force during the time you were in the city government?

A. I don't know, sir; but I think it was over 200 men more than it is now.

Q. Or has been for the last year or two?

A. Has been for the last year; yes, sir. It is my recollection that the force was between 4 and 500 men, and, if I recollect right, the recent estimates were 198 or 200 men.

Q. Is it, almost beyond peradventure, true that this port will handle, within a short time—say 12 months—a large amount of California and Western grain, Kansas grain, through the railroads?

A. That is my impression and belief.

Recross-examination by Mr. BENEDICT:

Q. During a considerable period of time you were administrator of improvements of the city of New Orleans, were you not?

A. Yes, sir.

Q. During that time the superintendence of the repairs and construction of the wharves came under your supervision?

311 A. Not the whole of the time. I came into office during some three months; I think it was between three and four months— —

Q. You, of course, accounted to the city for the work you did?

A. Yes, sir.

Q. Your report may be found in the city archives, on the city books?

A. Yes, sir. May I state in that connection, as a matter personal to myself, that the estimate charged to the department of improvements in the archives at the city hall for wharf repairs includes a very considerable expenditure for the protection of the city from overflow during that season; it involves an expense of $15,391.21 expenses for labor, cart hire, and materials used in the protection of the city from overflow.

Q. By adding to or filling in the levees?

A. By building the levees.

Q. Bulkheads?

A. By building the levees in the upper part of the city, strengthening the levees; and in the expenses of that period was embraced the contract price for a steamship wharf, $16,410.44, for the Cromwell Line.

Q. That was during the period from January until May?

A. Yes, sir.

Q. During that period what were the gross receipts derived from wharfage?

A. I would not like to say for the greatest period of the receipts,

because the heavy receipts commence in November; it was not the season of heavy receipts.

Q. And during that period of time the river is really always at its height and less repairs can be made then than at another period of the year?

A. As a question of fact, the river had receded and the work of repairing the wharves had actually commenced in the month
312 of March—in the month of April. It had been high in January and February.

Q. Is it not generally at its height up to, say, the first of June?

A. Well, that is a matter that I would not like to express myself on. I know we were working; we were doing active work.

By Judge KENNARD:

Q. Were there not some other causes during this period than which you have testified to which tended to make the outlay during that period specified more than formerly; were there not some other causes than those you have named?

A. I think I have stated everything, except the fact that the wharves were in—I stated that fact, also, that the wharves were in a terribly bad condition; that had been the case in the termination of other leases, according to the records of the city hall.

By Mr. DENEGRE:

Q. Is it not to your knowledge that there are more wharves across the river in Algiers than when you were administrator of improvements?

A. Yes, sir.

Q. Are they not building wharves over there every year?

A. Well, I do not know what are being constructed now; I think, though, that is the case.

Q. Does the Morgan Railroad Company and the steamships and those doing business with the railroad company go over to Algiers?

A. The Morgan steamships do.

Q. The Morgan steamships land in Algiers?

A. Yes, sir.

Q. All that cotton that Morgan brings in from Texas goes over on his ships?

A. I don't know that.

Q. Principally?

A. I should think some; I don't know what proportion.

313 Q. Therefore, so far as the wharfage of this city is concerned, it derives no benefit from the Morgan steamships, from the freight that he carries off on his ships, so far as the wharves is concerned, then?

A. I should say so.

Q. Do you not know that arrangements have been made for the handling of the immense grain trade across the river, and not on this side?

A. I don't know to what extent: I have heard it stated that they were making arrangements to cross the river above here, but

whether they will bring their grain over there or on this side I don't know. Wheelock told me some time ago that they expected to cross above the city.

Testimony Taken by Consent, on Behalf of Complainants, at the Office of Kennard, Howe & Prentiss, New Orleans, La., December 18th, 1882.

MARION N. WOOD sworn by MARK BREEDEN, Jr., notary public.

By the NOTARY: It is agreed between the counsel on both sides that the affidavit heretofore made by Captain Marion N. Wood on the trial of the rule *nisi* shall be used on the trial of this case on its merits, with the privilege of cross-examination and of supplementing his affidavit at will by either party.

Cross-examination by Mr. BENEDICT, of counsel for defendants:

Q. Captain, what does it cost to make the wharves from St. Joseph street to Toulouse street, where the steamboats land?

A. What does it cost from St. Joseph street to Toulouse street?

Q. Yes.

A. Well, I can go into a calculation, but I cannot tell you right now what it costs.

Q. Did you ever make any of those wharves?

A. Have ever built any of them?

314 Q. Did you ever make an estimate for the purpose of obtaining a contract for building them?

A. A contract for building them? No, sir.

Q. Were you ever engaged in any manner in the building or rebuilding of those wharves?

A. Well, I have sold those wharves timber—know what the timber cost.

Q. How long ago was that, Captain?

A. Well, it was before the war.

Q. Before the war, what was the price of wharfage for steamboats to land between those points?

A. Well, it was the same as it is now—10 cents.

Q. Think a moment?

A. Same as it is now—10 cents—I suppose.

Q. How long have you been steamboating?

A. Since I have been steamboating to New Orleans?

Q. In this trade?

A. I have been steamboating since 1850, but I have been steamboating direct to New Orleans since '62.

Q. 1862?

A. No; I have been steamboating here since 1858, I believe, running through to New Orleans, but I have been steamboating since 1850.

Q. What I desire to get at is the price you paid for wharfage on your first trip, for the first use you made of the levee, of the wharves and the levees, of the port of New Orleans?

A. At the port of New Orleans?

Q. Yes.

A. Well, I don't recollect it ever being less than 10 cents.

Q. You know positively it has never been less than 10 cents?

A. I don't recollect before the war; I cannot say positively, but I think it has been 10 cents, to the best of my knowledge; I can refer back to the books; they would tell what it was.

315 Q. Don't you know before the war it was 15 cents for steamboats?

A. I don't know that; I don't recollect; I can't say whether it was or not; I can't tell from memory now what it was.

Q. Outside of the wood-work of the wharves against which the boats lay and upon which they discharge their cargoes, is there not a space of ground afforded the boats upon which their cargoes are placed?

A. Outside of the wood-work?

Q. Outside of the wood-work—what do you call that?

A. Outside of the wood-work?

Q. Yes.

A. Well, that is part of——

Q. Batture, is it not?

A. Batture; it is not the wharf, because the wharf I consider the wood-woek.

Q. The wood-work is the wharf; outside of that you always place your cargoes, do you not?

A. Some outside and some inside.

Q. As a general thing, bring it way across and place it on the batture?

A. Well, as soon as we get room to put it there, but we have not the room sometimes; right now we have on the apron of the wharves a hundred barrels of molasses.

Q. That arises from the fact that a great many boats arrive at this point at the same time?

A. We have not had the room—the wharfage room—any time lately to do it; we have not had the room—wharf room; had to put the cargo of molasses upon the apron of the wharf; I reckon 100 barrels of molasses upon the apron of the wharf.

Q. Now, in the use of that batture outside of the wharves, do you consider it an advantage or disadvantage to your steamer?

A. To land outside of the wharves?

Q. Yes.

316 A. Well, it is an advantage, of course; the only trouble is we have not the room; that warehouse ought to be removed from there.

Q. You mean the sugar sheds?

A. Yes, sir; it is costing us double the amount of money, that want of room to handle cargoes, that it should cost.

Q. You are now speaking of the difficulties arising from the sugar sheds outside of the wharves?

A. I say we have not the room for the sugar sheds; if we had the room immediately back of the wharves and in front, we would have enough—sufficient room; it would do, but we have not the room in case they are to receive or discharge large cargoes. I guess

it is costing now double really the amount it would had we the room.

Q. You are speaking about this present time?

A. Yes, sir.

Q. The months of November, December, and January, perhaps?

A. It is usually the months most crowded?

Q. During the other nine months of the year there is not so much crowding, is there?

Q. There is some crowding all parts of the year; there is crowding sometimes in the spring of the year, but not generally so much.

Q. This is the only time when there is crowding?

A. On the sugar landing.

Q. That is between Canal and Toulouse street?

A. I don't know exactly where Toulouse street is.

Q. Canal and the Morgan railroad ferry?

A. Yes, sir; the Morgan railroad.

Q. Do your boats arrive always in the daytime or frequently at night?

A. At all times.

Q. At all times of day and night?

A. Yes, sir.

Q. Do you bring passengers?

317 A. Yes, sir.

Q. Is it convenient or not to those passengers to have a light to direct them across that batture—the wharves and the batture—to the streets of the city?

A. Well, I suppose; I expect so. We like to have the lights, but it don't pay boats anything.

Q. The boats don't pay for these electric lights, do they?

A. That is my understanding.

Q. How do they pay for them?

A. In the shape of wharfage.

Q. In the shape of wharfage, they pay?

A. Yes, sir.

Q. The boats also pay for the police to take care of their cargoes in the shape of wharfage, do they not?

A. Well, that is what I understand.

Q. Yes, sir. Do I understand that they do care for the cargoes on the wharf?

A. Never had a policeman to do anything that we didn't pay for it.

Q. Whenever you employ special policemen, you mean?

A. Yes, sir; whenever we wanted anything done.

Q. Do you know how many policemen guarded the cargoes on the wharves of the city since the contract of the present lessees went into effect?

A. I don't know.

Q. Do you know how many guarded the cargoes before the present lease?

A. I don't know that they ever guarded it at any time.

Q. Is it necessary or do you ever call upon the wharfinger and

other officers to give you the proper place for your boat and a place for your cargo as against other boats?

A. We call on them when the wharf is crowded with freights.

Q. They are the proper persons to apply to, are they not?

318 A. The wharf-master; we expect to have the freights removed from the wharves where the freight stays there a considerable time.

Q. Do you think he is an officer that should be dispensed with entirely?

A. No, sir; I don't.

Q. Now, Captain, what is the tonnage of the boat of which you are in command at this date?

A. I am not in command of any boat.

Q. How many trips have you run during this past year as captain of any boat?

A. Well, I have been superintendent of the line; now I am not running on the river now.

Q. What line?

A. The Red River Coast Line. It was in the spring when I gave that testimony there on the "Silver City."

Q. Were you running her as the commander?

A. Yes, sir.

Q. Where did that boat land?

A. She landed at different places below Canal street.

Q. Below Canal street?

A. Sometimes we came in above the other boats when it was crowded below; could not get in below.

Q. What is her tonnage?

A. 275 and some fraction.

Q. Your wharfage, then, on each trip was $27 and odd cents?

A. Yes, sir.

Q. How long would your boat lay at the landing?

A. Well, sometimes would lay there a day; sometimes five days; if there over 5 days, pay extra.

Q. If there over 5 days?

A. Yes, sir.

Q. Pay what?

A. $5.00 a day.

319 Q. Wharfage was $27.00 and odd cents?

A. Yes, sir.

Q. Do you know what the revenue of the wharf lessees was for the year ending 31st of May, 1880?

A. Well, I have seen the estimates, about——

Q. Do you know?

A. No, I don't; I cannot tell you that I know exactly what it is.

Q. Do you know what the expense of the wharf lessees was to repair, to put in repair, to build and rebuild, and make new wharves during that same period of time?

A. During what period of time?

Q. From the 31st of May, 1881, to the same date of 1882?

A. Well, all the information I can——

Q. You have no facts except hearsay?

A. No; I have an historical knowledge, a general knowledge.

Q. Now, we will ask for your historical knowledge of their expenditures during that period of time upon those wharves.

A. During——

Q. One year; the first year of this lease.

A. Well, from the idea I have gotten, it was $150,000.

Q. That is your idea?

A. Yes, sir.

Q. From whom did you get this idea?

A. From observation and——

Q. Observation and what?

A. From a general knowledge of the thing.

Q. From your observation of what?

A. I can see how much work is done each year on the wharves; that is what I judge from.

Q. What else did you get your estimate from?

A. That is all.

320 Q. Did you go down and examine the wharves; examine them in the 3d district, at the time this lease went into effect, say, on the last of May, 1881?

A. Well, I have been over there—the wharves—a thousand times, I reckon.

Q. We are speaking of the wharves of the 2d and 3d districts.

A. Not every day. Sometimes for months don't go there.

Q. Did you see the condition of those wharves in the summer of 1881?

A. Yes, sir; it is every year I go over the wharves.

Q. Describe the condition of the wharves in the 2d and 3d districts in the months of May, June, July, and August of 1881.

A. Well, some of the wharves had caved in down there, that I noticed.

Q. Did not build the wharves in the 2d and 3d districts?

A. Don't know.

Q. Was not every wharf rebuilt, from the foundation up, in the 2d and 3d districts?

A. No, I don't think so.

Q. You don't think so, but you don't know?

A. I don't recollect of going down there and finding any wharves built. Certainly they would not be all gone.

Q. Did you run in the St. Louis trade at any time?

A. I have made trips to St. Louis oftentimes.

Q. Did you pay wharfage at St. Louis?

A. Yes, sir.

Q. What wharfage did you pay there?

A. I have paid at St. Louis, on the "Ashland," it was either seven or nine dollars a trip.

A. A trip?

A. Yes, sir.

Q. What was that for?

A. It was for wharfage, I suppose.

Q. What did you pay, then, for the use of the wharf-boat?

321 A. I had no wharf-boat when I was there.

Q. Did you have a cargo on your "Ashland?" Did you have a cargo on the boat?

A. Yes, sir.

Q. How did you land your cargo?

A. I have put up at the wharf-boat at their landing, but I am speaking of this particular boat which ran in the Missouri river. I have landed there when I paid it. They have an Anchor Line there, as every line has wharf-boats there, and they charge you so much to unload, load, for advertising—an agency; all this is included in a lump.

Q. When you land at the port in St. Louis what is charged your cargo? What is the percentage or rate of wharfage to be paid to the city for the use of the landing?

A. If the boat is owned there she pays no wharfage.

Q. Go on.

A. If she is not owned there she has to pay a small wharfage; I think it is about 2½ or 3 cents per ton.

Q. How long ago was that you are speaking of?

A. About two years ago.

Q. Now, what is the rate charged on this wharf-boat, including the agency, the expenses, the advertising, and so on?

A. What is the expense?

Q. The rate charged.

A. That is owing entirely to what you have to do. When I was running there, the "Ashland" there, we didn't land at a wharf-boat at all.

Q. I am not speaking specially of any one steamboat.

A. When I ran there with the Anchor Line, with the Carter Line—I made several trips for the Carter Line—we paid sometimes one price and sometimes another for the privilege of loading at their boat, which was private property, and their agents worked for us, you know.

322 Q. You have stated that several times. What I want to get at is what they charged you there per day, or per the amount on a ton of the freight, or, in other words——

A. I cannot tell you the prices charged, for they have different wharf-boats, and because we landed sometimes at one and sometimes at another.

Q. Give us the charge at each.

A. Well, it has been since I made those trips 6 or 7 years ago—that is the time I was on the "La Belle;" I don't remember, but if you will get a St. Louis man here he can give it to you.

Q. Well, Captain, I have some details of what the wharves cost in St. Louis and of what revenue the city derives from those wharves, from steamboats, and the wharfage charges, with reference to the price for loading and unloading at those wharves.

A. Well, they pay dues to the wharf-boats; I know that.

Q. That is in addition to what you pay to the city for landing there?

A. Oh, yes, sir; for the use of the wharf-boat.

Q. There is really no wharf at the city of St. Louis made by the city, is there?

A. Yes, sir.

Q. What is it?

A. They keep up a cobble-stone wharf there.

Q. They keep up a cobble-stone wharf, an inclined plane, from the hill down to the river?

A. Keep steamboats down there to wash the mud off as the river falls.

Q. There is no caving bank there, is there?

A. Not where the steamboats land.

Q. All that is necessary to do is to fix a few cobble-stones?

A. Yes, sir.

Q. What is the difference, then, between the landing for
323 steamboats at St. Louis and that at New Orleans relative to the expense requisite to keep it in repair?

A. Well, the expense—I cannot tell you what the expense is for—keeping, washing the mud off when the river rises. I cannot tell you exactly that, but I suppose the expense for keeping the wharf up at St. Louis is very little outside of it.

Q. The expense at New Orleans for keeping the wharves up is very great, is it not?

A. Well, as I have stated, it is, to the best of my knowledge.

Q. How long do those wooden wharves last at the port of New Orleans, especially where there are caving banks? Is it not the general rule they cave every year and have to build new wharves?

A. In certain portions of the city it is; in other portions, as where the steamboats land, I never knew it to cave.

Q. At the steamboat landing are not the wharves constantly requiring repairs?

A. Yes, sir; they require repairs every year.

Q. How long do the wharves last at the steamboat landing, taking it as a whole?

A. I suppose they last 5 years; about that.

Q. Don't they sometimes wear out in 3 years, completely?

A. The planks may on top; I don't suppose the wharves do.

Q. Have you ever paid wharfage at Vicksburg?

A. Yes, sir.

Q. They have no wharf there at all?

A. No, sir.

Q. You have a wharf-boat?

A. Yes, sir.

Q. They make you pay wharfage, notwithstanding they have no wharf?

A. Yes, sir.

Q. You have to pay the wharf-boat besides?

324 A. We pay—I believe they charge, as far as I recollect, $10 for landing there; don't matter whether it is a big or small boat.

Q. Then you pay the wharf-boat in addition?

A. No, sir; I think that is all we are charged. I think this $10 charge is for the whole thing; that is all, I think.

Q. Is not the wharf-boat private property?

A. I suppose; they charge you, I think, for the business; it is owing to the business they give you. If they give you no business I don't think you have to pay anything.

Q. Now, at Natchez what do you pay?

A. I disremember; I cannot recollect.

Q. Well, take Memphis; what do you pay there?

A. Well, I think we pay at Memphis—I can't recollect for certain what we pay; but we pay a big wharfage there.

Q. Nearly as much as New Orleans?

A. I don't recollect exactly, but it was terribly, it was mighty heavy.

Q. You have no wharf there, have you?

A. No, sir.

Q. Do you know what wharfage you pay at Bayou Sara?

A. About $2 to the wharf-boat.

Q. There is no general wharf there furnished by the city?

A. No, sir.

Q. Suppose your boat was required to land at State street, in the sixth district, land your sugar and molasses there instead of at your regular landing, at Sixth street, where there is no wharf, what would you think of that?

A. If I had to take freights where there was no wharf?

Q. If you had to go there how would you like it?

A. If you go to Shreveport and Baton Rouge I can tell you. Shreveport has no wharves, and I—

Q. We are speaking now of State street, in the sixth district. Would you land your boat there?

325 A. I would, if they paid me.

Q. Paid you?

A. Wait a minute; any boat would land anywhere if they got paid for it.

Q. Suppose, for instance, that nobody chartered you to land there, but you simply landed your boat the foot of State street, would you get any freight up there?

A. Where is State street?

Q. It is about 4 miles above the steamboat landing.

A. I don't suppose I would get any freight there.

Q. If you was to bring down your freight and land it at State street and notify your consignees that their freight was there, would they receive it?

A. I would not do that unless it was consigned there.

Q. Now, why not do that?

A. Because I know they would not receive it there.

Q. Therefore, the steamboat landing is at the place where all the freight is received and delivered, between St. Joseph and Toulouse streets, is it not?

A. Yes, sir.

Q. Is not that the most central location in the city?

A. Yes, sir.

Q. Is it not the most convenient of access to all the shipping-houses?

A. Yes, sir; not all.

Q. The greater part—portion?

A. About as central a place as you can get.

Q. Is it not the most convenient of access to all the molasses dealers?

A. Yes, sir.

By Mr. DENEGRE:

326 Q. How much, Captain, did you pay—I don't mean the rate—how much in round money did you pay on the "Ashland" the last time you were at St. Louis?

A. Well, I cannot recollect; between seven and nine dollars. I disremember how much.

Q. Between seven and nine dollars?

A. Yes, sir; on the "Ashland."

Q. To the city?

A. To the city, yes, sir; I disremember.

Q. What is the tonage of the "Ashland?"

A. I disremember that. I disremember her tonnage, too; but it is between three and four hundred; near four hundred, I believe.

(The reporter understood the witness to say that 376 was correct, but is not positive.)

Q. Who was your clerk when you were there?

A. Kennedy, I believe, was his name; was it not, Captain Kirk?

Q. Was not Mr. Chesley your clerk on the "Ashland?"

A. Not at St. Louis; not that I recollect of.

Q. Is there not more space on the steamboat landing from Custom-House street to Poydras street, or rather to Girod street, than there is at the landing just below Custom-House street, the steamboat landing; more levee room, more levee space?

A. From Custom-House street to what?

Q. To Girod street than there is from Custom-House below.

A. Well, sir; there is more space back of the levee, but I think the front is a longer distance; but above there is more space back of the front—more room to put out the cargo back. There is no sheds.

Q. That is owing to the sugar sheds not being there?

A. Yes, sir; I cannot tell the exact measurement.

Q. I suppose you know, as a matter of history, that the city of New Orleans derives quite a large revenue from the sugar sheds?

A. I don't know how they built it.

327 Q. Don't you know, as a matter of history, that the city of New Orleans derives a revenue from the sugar sheds?

A. Well, I suppose they rent them or sold them rather; I am not positive about that.

Q. The land back of the steamboat landing you say in your affidavit is very valuable land?

A. Valuable land there, of course. It has been sold by the city.

Q. Do you know the land back there, of the levees, back of the wharves, from Custom-House to Girod streets; has it ever been sold by the city—that portion that is at present in use by the steamboats?

A. Well, I know some lands back there have been sold.

Q. You mean back of Delta street?

A. Well, the land that that railroad was on was sold, was it not?

Q. That the railroad uses?

A. The railroad depot was built there and that car station.

Q. You mean the Morgan railroad?

A. No; that horse-car station. That was sold by the city.

Q. That is back of the Louisville & Nashville railroad?

A. Well, that has been sold by the city, has it not?

Q. Is not all the space on the levee, back of the wharves from Custom-House street to the Morgan Ferry depot, at the foot of Girod street, open and in use by the boats to place their cargoes upon?

A. Well, no, sir; not open where there is any sheds there.

Q. I am speaking — above the sheds; I am not speaking of below Custom-House street; the sheds stop at Custom-House street?

A. Above; yes, sir; that is so.

Q. It is very valuable land that the steamboats have the use of for discharging their cargoes upon?

A. Well, yes, sir; probably——

328 Q. Land for which you say the city, if it was sold, should get, derive a large price?

A. All that block where Conery has built; all that there was sold a few years ago.

Q. That is considerably back of the river?

A. Yes, sir; but the river used to run right up there years ago.

Q. How many blocks do you suppose intervene between the wood-work of the levee, of the wharves, and Mr. Conery's store?

A. From the front there to the store must be a block and a half.

Q. Is it not more than that?

A. I have never measured it.

Q. Could the Vicksburg boats land there at the foot of Canal street and discharge their cargoes within one-half of the time that they do if they were not allowed to have so much of that levee space?

A. Well, if they did not they would not have room enough there to discharge.

Q. Is it not for the interest of the steamboats there that this space should be left open by the city of New Orleans for their use?

A. Yes, sir; that is just what we want on the lower wharves; we want the sheds out of the way to have room.

Q. If you had as much space down there where you are as the Vicksburg boats have where they land, would 10 cents per ton be too much wharfage for you to pay?

A. My views about this thing is that the city should not derive from the steamboats, from commerce, for the amount of tonnage landed in front of the city, any more than would be necessary for the cost of keeping up the wharves. We have plenty of boats com-

ing in and going out in twenty-four hours, and some make three trips weekly.

329 Q. Is not the wharfage very much easier to steamboats, provided they are furnished with such facilities as to enable them to discharge their cargoes rapidly and be on their way most of the time?

A. Yes, sir; they want plenty of room.

Q. I ask you if the sheds were out of the way, which would give you a clear space to land, would you then consider 10 cents a ton too much wharfage for you to pay?

A. I would — so, because I think the city should not derive a benefit over and above the amount necessary to keep the wharves up.

Q. Don't you think that the city should derive a revenue from her property?

A. Well, I should think that she would derive a revenue from her property by having it used as a steamboat landing in a business way.

Q. But you say that if those sheds were out of the way that you would have very much more space to discharge your cargoes. Now, I have shown you that the city of New Orleans does derive a revenue from the sugar sheds, and she derives no revenue whatever from the space back of the steamboat landing between Custom-House and Girod streets. Now, is it not worth something to the steamboats to have that large space there?

A. Above; of course.

Q. Back of the wharves, so that they could land their cargoes?

A. They could not handle their cargoes without more room to handle them in.

Q. As a matter of fact, has the city of New Orleans ever derived any revenue from its wharves over and above what was necessary to keep them in repair and rebuild them?

A. Well, my idea about that is that——

Q. I mean your knowledge?

A. That the amount of wharfage could be less than ten cents a ton.

330 Q. That is your idea?

A. Yes.

Q. Now, what is your knowledge in regard to the matter?

A. Well, you may call it knowledge as well as idea.

Q. You have made a calculation?

A. I have calculated on the business we do here.

Q. Now, you say here that you have examined into this matter carefully, made a calculation in regard to it, based upon the amount of tonnage received at this port, especially upon the basis of the tonnage arriving at this port in the year 1881. Where did you get the figures upon which you based your calculation?

A. I got those figures from the printed reports of the amount of tonnage.

Q. Made by whom?

A. Made by the city authorities here, I suppose.

Q. By the city authorities?

A. Whoever kept the records.

Q. When were they published?

A. I have seen it several times published—the amount of tonnage arriving here at various times.

Q. By the city?

A. I don't know whether it is published by the city; I have seen the estimates made oftentimes and published—the amount of tonnage; I think it is done every year.

Q. Now, can you remember the exact place from which you derived the amount of tonnage, and upon which you based your calculation at the time that you made your affidavit?

A. Well, I have been studying much about this thing recently, and the amount of tonnage generally is increased in some different shapes in the last year or two—in the shape of barges, and we have a great many iron steamers coming here now.

Q. But you say in your affidavit that you based your calculation upon the amount of tonnage arriving here in 1881. Now, if
331 you looked into it with such care, can you not tell me where you found the estimate upon which you made that calculation, and where that estimate is now?

A. Well, the calculation about the tonnage, about the amount of tonnage, landing here is from statements that I have seen made; published statements in print of the amount of tonnage per year.

Q. At the time that you made your affidavit you made these calculations upon your recollections of those statements, but you had no statements before you?

A. I had no statements of the amount at that particular time, but I have seen them oftentimes.

Q. Now, in calculating the revenue which would be realized by collections from steamboats you placed it at $300,000; was that estimate made upon the rates as charged in the Ellerman lease or rates as charged in the present lease?

A. In the Ellerman lease and the present lease the charges are the same.

Q. That is your belief now—that the rates are the same in the Ellerman lease as in the present lease?

A. 10 cents a ton, are they not?

Q. Then, when you made your calculation, you made that upon the supposition that the Ellerman lease and the present lease were identical in charge?

A. The charges have been the same; I don't know of any change, any less charge or more.

Q. When you made this calculation of $300,000 what lease did you have before you?

A. Well, the Ellerman lease, I believe, was the lowest figures.

Q. Did you have any lease before you when you made this calculation?

A. No, sir; had none before me.

Q. Where did you obtain your ideas in regard to the rates charged to steamboats, steamships, and barges?

332 A. From various observations, as I said before.

Q. Then you are mistaken when you say in your affidavit that you looked into this thing with a great deal of care?

A. At that time I had been over it then; it has been some time since that was made.

Q. I ask you to state the data upon which you made the calculation in your affidavit.

A. About that time I was figuring on that estimate.

Q. I mean the data upon which you based your calculation. I understood you to say that you had no lease before you; that you had no estimate right there before you of the amount of tonnage. Now, I want to know from where you got the $300,000?

A. I had an idea of the amount of tonnage from the printed statements made of different years; of the amount of tonnage each year; it it is published here every year.

Q. Did you have this before you at the time you made this affidavit and figured your calculation; made your calculation upon that?

A. I didn't have any statement present with me at that time; but I had been calculating prior to that time.

By Judge KENNARD:

Q. You figured it in your head?

A. I did that in my head about the estimates; I know from other estimates—of different estimates of the work; I had a general idea of what it costs to build; how much lumber it would take to build a hundred yards square; I knew the amount of wharves that they might put up there; how often they would have to build; it is an easy matter to make the calculation.

By Mr. DENEGRE:

Q. You never had occasion to build a wharf?

A. Not at New Orleans; I have never been in that business.

Q. You don't know what it would cost per square to build a wharf, do you?

333 A. I can figure it up.

Q. Well, about how much?

A. Well, I can't tell you precisely now what it would cost one per square, but it is a very easy matter to calculate the wharves—the amount of timber that it costs for a wharf, and the amount of timber that is in a wharf.

Q. Suppose you make, say, a rapid calculation, and tell us how much it would cost per square?

A. I wouldn't like to do it; I might miss it considerably; but if you will give me a couple of days I will make you an estimate of what it costs to build a hundred yards of wharf or a hundred yards square.

Q. Now, do you know how much it costs to keep up the levees—that is, the dirt portions; how much it costs to keep them up here in the city of New Orleans?

A. No, sir; I don't know what it costs.

Q. Do you not know that the levees drain back from the river?

A. Yes, sir.

Q. Don't you know that during the time that Ellerman had his lease there was a great many complaints that he was not complying with it in keeping the wharves as he should; was not that the general cry amongst the steamboat men?

A. Well, there has been some complaints, I believe; oftentimes complaints about the wharves, and so on. I have been complaining myself lately.

Q. I say, during the Ellerman lease was there not a general complaint amongst the steamboat men that Ellerman was not complying with his lease; that he was doing just as little as he could?

A. Well, I don't recollect about any particular parties complaining. There has been always more or less complaint about the condition of the wharves. Some places of the wharves now are kept up splendidly; some are not. If you go down below to the lower end of the wharves next to the Morgan depot you will find mud-
334 holes there that are terrible. It is costing us a great deal of money to get our freight over it.

Q. Captain, do you not know it to be a fact that in all cities there is more lawlessness on the river front in port, near the water, than there is in any other portion of the city in every city of the world?

A. No; I don't know that. I think you will find more of it in those coffee-houses than on the wharves.

Q. The coffee-houses near the wharves?

A. Yes; not on the wharves.

Q. Don't you, as a matter of fact, in all large cities, require more police to police the river front than it does any other portion; as a matter of history do you not know that this is so?

A. Well, I should not see why it should be.

Q. Is it not so, to your knowledge?

A. Well, I don't know that it would be so.

Q. Don't the roustabouts and all the employees on the river frequent all these coffee-houses there?

A. Yes, sir; they do The coffee-houses is where I say there is more trouble—out about the coffee-houses—than there is in front of the wharves—than there is on the wharves. Now, if you will go to St. Louis, the coffee-houses there are fronting the wharves, but here they are fronting Canal street and other places back of the wharves beyond the railroad.

Q. Captain, in wet weather the wharf at Vicksburg is not fit to be used, is it?

A. At Vicksburg?

Q. Yes; in wet weather.

A. Well, I don't recollect about the wharf at Vicksburg.

Q. I mean that portion of the wharf in front of the city proper, where there is a wharf-boat with old posts to tie your boat.

A. I don't think they have much wharf at Vicksburg.

Q. At Vicksburg there is no wood-work?

335 A. No, sir; I don't think there is any wood-work at all; I don't think so—I am not sure, but we land at a wharf-boat.

Q. Now, don't you know that the present wharf lessees agree that in the third year of their lease there should be made a reduction of 20 per cent. of the wharfage—10 per cent. at least?

A. I believe there is some deduction to be made, but I forget the exact amount.

Q. Do you know how much deduction they are to make in the fourth year?

A. I have read it, but I disremember now; would not say precisely now.

Q. Do you now know it is as much as 20 per cent.; and do you not know that in the fifth year they make a reduction also of 20 per cent.; that they charge steam vessels 15c. instead of 20c., as Ellerman charged; that they charge grain vessels less; that they charge vessels in distress less; that they charge Government vessels nothing; you didn't know all those things when you made your affidavit, did you?

A. I know they charge steam vessels more than that, but how much more I don't recollect.

Q. About how many packages, Captain, a load did you carry when in the Red river trade?

A. Well, that would be a very uncertain question.

Q. Well, about how many?

A. I would have to go and make a calculation; we carry from a 1,000 to 7,000 a trip—in different places; 2,000 bales of cotton, sometimes 200, and sometimes a hundred; it is a very hard matter to count it up.

Q. Now, take a full trip from New Orleans to Shreveport; have you ever calculated how much difference in your freight it would make if you had no wharfage to pay?

A. How much difference in my freight?

Q. Yes.

336 A. It would make the difference of the wharfage.

Q. Yes; but how much difference per package?

A. Well, I know if you will take and calculate it that it costs the same price when we have a great many packages. For instance, if you can carry 3 or 4,000 bundles of iron ties—cotton ties—some trips, and you can carry 1,000 on other trips, it is a sort of thing you cannot hardly ever calculate.

Q. Did you ever divide the amount of wharfage by the amount of packages you carried; do you think that you would have currency small enough to figure up the freight due you on each package?

A. That would be altogether owing to the trip we calculated on—whether it would be one of the summer trips or one of the winter trips.

Q. Do you object to this high rate of wharfage because it would not enable you to make more money, or because it would not enable you to reduce your charges for carrying freight?

A. I object to it on the principal that I don't think the city should charge us—should collect out of the tonnage—any more than the actual money necessary to keep her wharves up.

Q. Did you not state, as I understood you to, that you did not know exactly how much it costs to keep up the wharves?

A. I don't know exactly how much it costs, but I have made an estimate of a portion of it, from knowledge or observation of the work done along the levee.

Q. Now, you said that a great many vessels have gone across to Algiers; now, don't you know that lately there has been very few sailing vessels coming to this port—that they are giving way to steamers?

A. Last year when that was taken there was five or six wharves built up on the other side of the river, and a good many vessels went over there and unloaded their freight at that time on
337 the other side of the river; I don't mean particularly Algiers, but all the west side of the river—Gretna and the opposite side of the river.

Q. Don't you know that there are very few sailing vessels coming to this port now as compared with former years?

A. Yes; very few.

Q. The business is principally done by the steamships now?

A. Yes, sir.

Q. The number of vessels in port is less than it used to be?

A. Well, as far as the sailing ships, there are very few; the number of sailing ships is materially less; but the steamers make a great many more trips, and they pay wharfage for each trip.

Q. But it takes fewer steamers?

A. Fewer number of steamers; but there is as much tonnage as before; in fact, they make more trips than the ships, and the amount of freight we handle there is not decreased because the vessels is decreased; the tonnage that has been carried away by the river has been equal or more.

Q. Do you derive that of your belief, or from figures that have been submitted to you?

A. That is my observation; I see vessels coming here, large steamers; they carry immense cargoes; one of them would carry as much as several ships.

Q. Can a steamboat discharge her cargo as fast at St. Louis on that inclined plane as she can at New Orleans on this broad wharf?

A. At St. Louis?

Q. Yes, sir.

A. We can discharge—

Q. On the wharf-boats, I mean.

A. At St. Louis?

Q. On the cobble-stones.

A. We don't have the same kind of cargoes to handle here.

Q. Suppose you had. Suppose that the "Ed. Richardson"
338 had to land at St. Louis with a full cargo of cotton; do you think she could get it off in the same time as she gets it off in New Orleans?

A. No, sir; of course not.

Q. Do you think she could make her weekly trips, as she does, if

she had to land at St. Louis, and do the same amount of business that she does in New Orleans?

A. I don't believe she could do it; because they are not prepared for that kind of business.

Q. There is nothing else at St. Louis except steamboats, is there?

A. Nothing but steamboats there; oh, yes, sir.

By Judge KENNARD:

Q. From your experience at St. Louis are not the charges there for wharfage and for the wharf-boats, including the agency, higher than they are here for wharfage and agency—lower, I mean?

A. They are lower in St. Louis.

Q. A good deal lower?

A. Yes, sir.

Testimony Taken by Consent, on Behalf of Complainants, at the Office of Messrs. Kennard, Howe & Prentiss, New Orleans, La., Feb. 20th, 1883.

A. M. HALLIDAY sworn by MARK BREEDEN, Jr., notary public.

Examined in chief, on behalf of complainants, by Judge KENNARD and Mr. RICE as follows:

By Judge KENNARD:

Q. Where do you reside, Captain?

A. In New Orleans.

Q. What is your occupation?

A. Steamboatman, steamboat captain.

Q. How long have you been engaged in that business?

A. 25 years.

Q. Between what points?

339 A. Well, [at] all points you may say I have been engaged; between New Orleans and Cincinnati now.

Q. How long have you been running to Cincinnati?

A. 5 years from here.

Q. What other points did you run between before that?

A. Well, from New Orleans to Red river and Ouachita.

Q. What boat are you commanding now?

A. The "Paris C. Brown."

Q. She plies between here and Cincinnati?

A. Yes, sir.

Q. Are you familiar with the wharfage charges at the city of New Orleans?

A. Yes, sir.

Q. And at Cincinnati?

A. Yes, sir.

Q. And the other points between Cincinnati and New Orleans?

A. Yes, sir; I know some of the wharf charges.

Q. How do your rates charged at New Orleans compare with those at Cincinnati?

A. Well, about seven times as large. One is 10c. and the other is 1½c.

Q. 1 cent and a half is the charge at Cincinnati?

A. Yes, sir; one cent and a half per ton, and the other is 10 cents.

Q. What does that amount to on your boat?

A. $9.65. Here I have the wharfage rates, and I will look; cannot say, but I will look. $9.65 at Cincinnati.

Q. And how much at New Orleans?

A. $64.20.

Q. How do the accommodations which you have at Cincinnati compare with those at New Orleans?

A. We have a stone wharf at Cincinnati and a wood wharf here.

340 Q. How does the expense compare for loading and unloading at the two points?

A. Well, the expense: We unload a boat here for $250 to $260. We unload there for about $175—$150 to $175; different class of freight.

Q. You are familiar with the charges at Cairo?

A. Yes, sir.

Q. What do they charge you at Cairo?

A. They charge $12.50, I think, for the load.

Q. Does that charge which you speak of at Cincinnati include the charge for the wharf-boat?

A. No, sir; that belongs to the "Line;" our wharf-boat; we pay no wharfage for the wharf-boat.

Q. Are you familiar with what charge is made against boats that have to pay the wharf-boat?

A. Yes, sir; $40.

Q. $40?

A. Yes, sir; that is, to load and unload.

Q. The "Line" owns it?

A. Yes, sir; and the wharf-boat furnishes a clerk and a wharf-master.

Q. What would be the charge in New Orleans for the same accommodation?

A. Well, they do not have that accommodation here.

Q. No? I mean what would be the charge in New Orleans, including—what would be the charges in Cincinnati—including the wharf-boat, as compared with the charge in New Orleans for wharfage?

A. You may say we pay this $40, but we get the benefit of the wharf-master and another man. That is the charge that the wharf-boat receives from other boats.

Q. Do you have any expense for agency in Cincinnati when you land at the wharf-boat?

341 A. Yes, sir; we have an agent uptown there.

Q. Well, in receiving or discharging a cargo of the same size in Cincinnati, suppose that you did not own this wharf-boat, how would the expense compare with the expense of receiving and discharging the same cargo in New Orleans?

A. Well, it would be cheaper to receive in Cincinnati than here, because they haul it right to the gangway of the wharf-boat and put it within 10 feet of the boat.

By Mr. RICE:

Q. How many day's labor do those two men represent in Cincinnati connected with the wharf-boat?

A. Three days each.

Q. Those two men are left to be hired here to do the same service in New Orleans?

A. Yes, sir; they are the same as our discharging clerk here. I don't have to pay here for a receiving clerk. We hire a discharging clerk but no receiving clerk.

Q. What rate of wages do you pay him here?

A. We pay $40 now.

Q. So you pay the same for the use of the wharf-boat and the use of the two men at Cincinnati as you pay for a discharging clerk here?

A. This man receives the cargo at Cincinnati, he don't discharge it.

Q. But you pay him the same?

A. I don't know; the wharf-boat pays him.

Q. You pay the same for the wharf-boat, including his services, as you pay for the discharging clerk here?

A. Yes, sir.

By Judge KENNARD:

Q. Are there any charges for the protection of the freight which you have at Cincinnati over those at New Orleans?

A. We put all the dry freight on the wharf-boat.

342 Q. That is, under cover?

A. Yes, sir; under cover and under watch on the wharf-boat.

Q. Then, as far as the expense of tarpaulins is concerned, you pay none?

A. Yes, sir; and our watching is distinct. We pay $6 there. Here I suppose it is about $25.

Q. About $25?

A. Yes, sir.

Q. You have been coming to this port since the electric lights were established?

A. Yes, sir.

Q. Do you find that the electric lights are at all essential to your business?

A. No, sir; I can do without them.

Q. Does your boat derive any material advantages from the electric lights here?

A. Not a cent.

Q. Not a cent?

A. No, sir.

Q. Do the police of New Orleans render your boat any service here in New Orleans?

A. No more than any other city.

Q. Do they render any services that are peculiar to your business as a steamboatman?

A. No, sir.

Q. Do they watch your freight?

A. No, sir.

Q. Do you have to employ watchmen when you want your freight watched?

A. Yes, sir.

Q. So that you receive nothing that you are justified in paying for out of the police of New Orleans?

A. No, sir; none—no more than if we were citizens.

343 Q. You can do just as well without any harbor police?

A. Yes, sir; they benefit us none that I know of.

Q. Don't benefit you?

A. No, sir.

Q. Are you ever inconvenienced in making your landings in New Orleans?

A. Yes, sir; some.

Q. In what way?

A. Well, we sometimes find it very hard to get in here; there is a strong eddy running up stream where we land, and we have to land bow down. I have been three hours landing.

Q. Do you ever find the wharves crowded?

A. Yes, sir; sometimes.

Q. Difficulty in getting in on that account?

A. Yes, sir. The last trip we had right smart trouble getting in. It was on account of the wharves being crowded with boats.

Q. Do you ever have occasion to land with head on?

A. Yes, sir; and I laid outside here two days at this wharf once.

Q. Could not get in?

A. No, sir; a day and a half; nearly two days.

Q. Have you ever had occasion to unload your boat without having her broadside to the wharf?

A. Yes, sir; several times found it that way.

Q. Is not that a great increase of trouble and expense?

A. Yes, sir; we unload quicker having a broadside.

Q. In unloading at the wharf-boat you must always unload with a broadside?

A. We have about two-thirds of the boat to the wharf-boat.

Q. Well, that is a great advantage, is it not?

A. Yes, sir; we can use the amid-ship gangway most always, and the head gangway sometimes.

Q. That you cannot do when much crowded here?

A. No, sir; have to use the head gangway. I laid here last

344 trip all day without putting off a package on account of the crowded wharf.

Q. From your knowledge of the advantages which you have at Cincinnati, and the facilities afforded here and there, do you consider the charge made here for wharfage a reasonable compensation for what you receive?

A. No, sir.

Q. You consider it unreasonable, then?

A. Yes, sir.

Q. What rate of wharfage do you think would be a reasonable compensation for the facilities afforded you here?

A. Five cents.

Q. Five cents?

A. Yes, sir.

Q. What is the rate of the charges at Memphis?

A. Well, I am not positive; but I think $12.50.

Q. I believe you said the rate here is very much in excess of any other point?

A. Yes, sir; far more than any other point. I have landed at the city of St. Louis, and I never paid a cent for wharfage; done it several times in my life.

Q. Are you familiar with the rate charged at St. Louis?

A. Not very. I go there in the fall.

Q. How far do you have to deliver your freight here from the edge of the wharf; where the wharf comes down to the river?

A. Well, I suppose from the apron, you mean?

Q. Yes, sir.

A. Well, I suppose three or four hundred feet outside.

Q. Is that a greater or less distance than you have to carry it at Cincinnati?

A. If the river is falling at Cincinnati we run it right off of the stage on the bank. Of course if the river is rising we put it up higher.

345 Q. The distance, then, is much greater here on an average?

A. Yes, sir.

By Mr. RICE:

Q. How many days do you ordinarily lay at New Orleans?

A. Well, from three to five days.

Q. How many trips have you made the past year?

A. We made last year 8 trips.

Q. And the year before?

A. 13.

Q. That is 13 in 1880 and 8 in 1882?

A. Yes, sir; 1881 and 1882.

Q. This is your second trip in 1883?

A. We commence our season in October.

Q. From October to October?

A. Yes, sir; I believe this is the 5th trip of this year; we begin from October.

Q. How do you find the steamboat landing at New Orleans when you come here, usually full or vacant?

A. Well, in the winter season it is pretty crowded; in the summer season there is plenty of room; in the winter season we have not much.

By Judge KENNARD:

Q. Have you ever had any experience in New Orleans with strikes; have you ever had here any trouble of that kind?

A. Yes, sir; several times.

Q. How long since?

A. Well, I think I have been here two or three times on this boat that I am now on when there was trouble with the laborers.

Q. Have you been at any time during the existence of the present lease?

A. Since this mayor is now in office?

Q. No; not since this mayor is in, but since Captain Aiken
346 got the lease of the wharves. Do you recall any strikes, any trouble with the laborers since then?

A. Yes, sir; I have had the crew to jump the boat.

Q. Since May, 1881, do you recall any trouble that you have had here in New Orleans with strikes?

A. I think my crew jumped me twice since that time; part of them ran off the steamer—not all. I think I had one day but six men since that once.

Q. When this disturbance that you refer to occurred, what service did the police, the harbor police, render you?

A. Not any; nobody was about; the men jumped off the boat as it went to back out.

Q. So you derived no benefit from them, then, at that time?

A. No, sir; they were not about that I know of.

Q. Do you recall any single occasion upon which the harbor police were a material benefit to you?

A. They arrested a drunken mate of mine once, that is all; about all that they ever done for me.

Q. Well, you have a knowledge besides that connected with your own boat with reference to this police matter, have you not; you have a general knowledge with reference to the police?

A. Well, no; not very much.

Q. I mean the harbor police?

A. I never noticed them doing anything, though.

Q. It has been the same on all boats that you have ever run to this port; your experience has been the same?

A. Yes, sir; about the same.

Cross-examination by Mr. BENEDICT:

Q. What kind of a landing is it at Cincinnati?

A. A stone wharf.

Q. What do you mean by a stone wharf?

A. A grade built out of stone.

Q. A grade built of stone?

347 A. Yes, sir.

Q. Is it not an inclined embankment, paved with stones, cobble-stones or square blocks, or some such thing?

A. It is a wharf graded down.

Q. Is it not the natural earth of the river, on which is laid square block stones?

A. It is the natural earth of the river graded down, and on which is laid pounded-up limestone.

Q. To the water's edge?

A. Yes, low-water mark.

Q. How steep is the grade?

A. Well, I cannot tell you the angle; it is easy for a horse to pull up, though.

Q. Is it a solid bank, not at all caving?

A. They have to fill it up to keep it from washing.

Q. Occasional repairs are necessary to the limestone bank?

A. Yes, sir.

Q. Apart from that, nothing else is requisite?

A. Oh, yes, sir; we have to put ringbolts in.

Q. Ringbolts?

A. Yes, sir.

Q. The ringbolts are made of iron?

A. Yes, sir; in wood fastenings.

Q. The fastenings are driven deep into the earth?

A. Yes, sir.

Q. How often are those ringbolts replaced?

A. I cannot tell you.

Q. Very seldom, according to your judgment, are they not?

A. It is owing to the big water they may have, that might pull them up. I think about all would have to be replaced now, at this time.

Q. Do any of the steamboats land at the embankment itself, or do they land at the wharf-boat?

348 A. The biggest majority land at the wharf-boat.

Q. Your line own its own wharf-boat?

A. Yes, sir.

Q. What did you pay for it?

A. $3,000.

Q. How long since?

A. We have had it now going on two years, I think.

Q. What are its monthly expenses?

A. Well, that I cannot tell you.

Q. How many clerks does it employ?

A. Two clerks and two watchmen.

Q. What other employees besides?

A. None, only laborers once in awhile.

Q. It is fastened to the shore by chains?

A. Chains and lines.

Q. Anchors?

A. Well, no, sir.

Q. What is the annual cost of the repairs to that wharf-boat?

A. I think it has been docked once in ten years.

Q. At what cost?

A. Well, I suppose a $1,000. I don't know the bill.

Q. What do you pay those two clerks on board of that wharf-boat?

A. Well, I suppose about $1,200 each a year.

Q. What do you pay your two watchmen?

A. I expect—I am not sure about the watchmen, but I suppose about $35 a month.

Q. Apiece?

A. Yes, sir.

Q. What do you pay your laborers?

A. Well, they just get them by the hour when they need them.

Q. You mean to say that the clerks do the work when there are no boats there?

349 A. The watchmen do it.

Q. The watchmen do it?

A. Yes, sir.

Q. How many boats constitute your "line" that use that wharf-boat?

A. Eleven and five; 16 boats.

Q. Where do they run?

A. Five run to—no, six run to—Memphis; 17 boats in all, there are; the balance run here.

Q. Six to Memphis and eleven to New Orleans?

A. Yes, sir.

Q. How often does it occur that two boats of the same line load there at the same time?

A. Generally two boats of the same line are there of our line, but not of the Memphis line.

Q. It seldom occurs that more than two are there at the same time?

A. Generally more than two.

Q. Do the boats land as close as that coming to the wharf?

A. Two land at the wharf-boat to receive; the other pulls out in the middle or crossways.

Q. And waits for the others to get out?

A. Yes, sir.

Q. Do you land your cargoes from the gangway on the wharf-boat or put it ashore?

A. Generally put it ashore, except the dry freight.

Q. What is the annual receipts of the wharves at the city of Cincinnati?

A. That I cannot tell you.

Q. Do you consider the wharfage at Cincinnati remarkably low?

A. Yes; I consider it cheap wharfage.

Q. It is the cheapest wharfage you know of?

A. No, sir; it is cheaper at Louisville.

350 Q. What is the difference between Louisville and Cincinnati?

A. Pay two dollars at Louisville.

Q. Pay $2?

A. Yes, sir.

Q. Louisville is much cheaper than Cincinnati?

A. Louisville charges by the boat; Cincinnati charges by the ton.

Q. What is the difference in dollars and cents on an average?

A. $7.65 on our boat.

Q. Does Louisville furnish as good or better or less accommodations than Cincinnati?

A. The same kind.

Q. What does the wharf-boat charge there, at Louisville?

A. She charges 12 cents a ton for receiving and delivering our cargoes.

Q. Twelve cents a ton for receiving and delivering?

A. Yes, sir. We store it then with the boat, too. They pay us our money; give us a check for our money. We roll the freight on the wharf-boat, and they give us a check for our money.

Q. What are the annual expenses at Cincinnati for the repairing of their wharves?

A. About $6,000 this year, so Moore told me, the wharf-master.

Q. Do you know what the receipts were in 1879?

A. No, sir.

Q. In 1880?

A. No, sir.

Q. Do you know what the disbursements were for the salaries, repairs, and sundry items during that period of time?

A. No, sir.

Q. Then you cannot tell whether it is a money-making or money-losing business at Cincinnati for the wharves?

A. I don't suppose it is run for the benefit of money; it is run for the benefit of commerce.

351 Q. If you were told they made 100 per cent. out of their wharves, would you believe it?

A. I don't think they do.

Q. If you were told that at a greater increase of wharves and of expense in New Orleans they had lost money, would you believe it?

A. I would not believe it.

Q. Have you no knowledge what it costs to build the wharves in New Orleans annually?

A. No, sir.

Q. Do you know what are the costs to keep up those wharves in repair annually?

A. I suppose——

Q. Do you know?

A. No; I do not know.

Q. When you speak of five cents per ton being a fair wharfage for boats to land at New Orleans, you don't know that it is—just guess?

A. No, sir; it is a kind of figuring.

Q. On what basis?

A. Well, I can't tell you where I picked up all the points.

Q. You picked up the points from casual conversation with different steamboatmen?

A. From steamboatmen.

Q. What wharfage did you pay in 1858 in New Orleans?
A. I was not steamboating here then.
Q. You said you were steamboating twenty-five years.
A. Not here.
Q. When did you first come here?
A. The first time I came here was right after the "war;" 1867, I think.
Q. What wharfage did you pay then?
A. Ten cents; I think the same as I pay now.
352 Q. Do you know whether you did not pay more?
A. I don't think so.
Q. Did you land at the same place?
A. Landed below Canal street.
Q. Would you be willing to land at the foot of Louisiana avenue and Napoleon avenue if you were only charged five cents a ton?
A. No, sir.
Q. Why not?
A. Because it is not the point to deliver cargoes.
Q. Why is it not the point to deliver cargoes; it is the city of New Orleans?
A. Yes, sir; but it is not the commercial centre.
Q. You consider this point where the steamboats land the commercial centre of the city?
A. Yes, sir.
Q. It is more valuable to land at on that account, is it not?
A. I don't suppose that if the steamboats did not land there it ever would have been the commercial centre; that is what makes it the commercial centre.
Q. Is it not more valuable on that account?
A. No, sir; for I have many times landed at Julia street.
Q. Why would not you be willing to land at Napoleon avenue?
A. Because there is no place to land there.
Q. There are mooring posts there?
A. Yes, sir; but there are no docks there.
Q. If you could land there for $3, would you do it?
A. I don't suppose I would do it for fifty cents.
Q. Why not do so; discharge your freight there, instead of paying wharfage of $64.20?
A. For the reason we fetch it to the city of New Orleans, and we have to——
Q. Then you don't consider, although you must land here, prefer to land at the commercial centre, that it is worth any more
353 to land there with good accommodations than it would be to land at Napoleon avenue or Louisiana avenue?
A. No, sir; I would not consider it so; I don't take that——
Q. Do you know the value of the land in front of where you land?
A. No, sir; I don't.
Q. Do you know whether or not there is any greater space of batture, of open ground not built up at all in front of the city, than at the steamboat landing, than anywhere else on the river front?
A. No, sir.

Q. Is it not kept there for the use of the steamboats?

A. The steamboats built these wharves, made that land, to the best of my recollection.

Q. Is it not kept there for the use of the steamboats and their cargoes?

A. Yes, sir; the steamboats built it.

Q. What?

A. They built those wharves with the money they paid.

Q. They filled in all the batture there?

A. They paid the money there to fill in the batture.

Q. You think because the steamboats paid the money there for the wharfage you consider it belongs to the steamboats?

A. Well, they should have the benefit of any doubt, I think.

Q. Why don't the steamboats pay their money and get their wharfage at other points; make landings for themselves?

A. There is some of them do do it. The "Anchor Line" has got a landing at Vicksburg now.

Q. I am not speaking of Vicksburg; I am speaking of New Orleans. Why don't you do it in New Orleans for your eleven boats?

A. Because we don't have the privilege.

Q. Why not apply for it?

A. Burdeau did apply for it here, and he could not get it.

Q. Did you apply for it?

354 A. Not individually.

Q. Did he make application to build a steamboat landing; to have the use of the wharves in the upper part of the city?

A. Yes, sir.

Q. Did they grant it?

A. They may land there, but they have not fenced it, under their control.

Q. Is it necessary that the front portion of the city should be fenced in for different individuals?

A. No, sir; I should not think so.

Q. Do you pay for watchmen at Cincinnati?

A. To watch cargoes?

Q. Yes, sir.

A. We have watchmen.

Q. Outside of the two watchmen employed on the wharf-boat?

A. We pay for one and the wharf-boat pays for one.

Q. Outside of the two?

A. No, sir; they belong to the wharf.

Q. What, have you then to pay $6 for watchmen?

A. Yes, sir. There are two days and a night. We use them from two or three nights.

Q. Outside of the watchmen, what other expenses do you have at that wharf-boat?

A. Nothing; only to roll the freight on the boat.

Q. Do you ever carry cotton to Cincinnati?

A. Yes, sir.

Q. What proportion of cotton?

A. Not very large.

Q. What is the capacity in bales of cotton of your boat?
A. Well, you have got me now, because she is not a cotton boat.
Q. What is her tonnage?
A. Her tonnage is 642 and——
355 Q. Can you carry six thousand bales of cotton?
A. She would carry the weight of seven thousand bales of cotton, if I could get it on her; but I cannot get that much cotton on her.
Q. You think that you could carry four or five thousand bales?
A. Yes, sir.
Q. Could you get that on the wharf-boat in Cincinnati?
A. No, sir; put it on the bank.
Q. Roll it right off on that shelving bank; the shell of that bank?
A. Yes, sir.
Q. Would it be exposed to the weather?
A. No more than our other cargo.
Q. Would it have to be covered with tarpaulins?
A. No, sir.
Q. Have to watch it?
A. No, sir.
Q. Would it not be in danger of being stolen?
A. Very little.
Q. Do you not think it to be a proper thing for stevedores, or rather wharfingers and other such officers, to be on hand to tell you where to put out your cargo, so as not to conflict with others' rights?
A. No, sir.
Q. And you don't think that is necessary; you don't think that is a necessary——
A. Evil?
Q. Evil.
A. No, sir.
Q. A necessary evil in a port of entry?
A. No, sir.
Q. You think, then, that the steamboats should be permitted to put their freight just where they please?
356 A. The wharves are there for all the steamboats; we could put it—consider our own interest.
Q. Steamboatmen are very independent, are they not?
A. No, sir; they are — most cowardly set of men I ever saw. I would sell out mighty quick if I could get a chance now.
Q. Do you know what the wharves at New Orleans are made out of?
A. Yellow pine and lumber posts drove in the ground.
Q. Have you ever seen those wharves being rebuilt?
A. Yes, sir; I was looking at them to-day. I guess Captain Kirk saw me watching them patching up some holes.
Q. It is constantly being done, is it not?
A. I suppose four or five men were working at it.

Q. I am speaking of the whole of the wharves; you find that the wharves are constantly in need of repairs—are they not?

A. Well, I suppose they have to do something to them or they would fall in.

Q. What is the life of this yellow pine lumber, exposed to the weather?

A. I don't know.

Q. Do you know the life of the posts that are put on the banks of the river?

A. I see these railroad fellows put them in, and they last full 20 or 30 years.

Q. What do they do to them?

A. I don't know what they do to them; they run over them for 20 or 30 years.

Q. Where?

A. Anywhere across these swamps.

Q. Are you certain of that?

A. I have seen the statement.

Q. Do you not know it to be the fact that every four or five
357 years the wharf spiles have to be replenished even in solid ground where they do not cave in?

A. No, sir.

Q. You don't know those things?

A. No, sir.

Q. Does your boat run the electric light?

A. No, sir; she does not.

Q. Not that far advanced?

A. She has pine torches.

Q. Not that far advanced as to electric lights?

A. No, sir.

Q. Have one if you could?

A. I don't know that I would; never felt the use of it before.

Q. Is it not generally coming into use on large steamers?

A. (The reporter understood the witness to say that three of their boats had the electric light on them, but is not positive as to the answer.)

Q. What do you use it for?

A. For head-lights.

Q. For what purpose?

A. To throw a light on a dark shore when landing at a wood-pile; one thing and another.

Q. It is material assistance, is it not?

A. In hunting a landing it is a good thing.

Q. Whilst making a landing and delivering freight?

A. Yes, sir; if the light is on the boat.

Q. And whilst receiving your freight from the landing?

A. Yes, sir.

Q. Is your boat now in port?

A. Yes, sir.

Q. How long has it been here?

A. Came here Sunday; Saturday night got in.

Q. When did you discharge your freight?
358 A. Sunday.
Q. What did you do after discharging it?
A. Put it under the tarpaulins.
Q. What else?
A. Paid a watchman on the levee and a man $40.00 to deliver it Monday.
Q. That was a discharging clerk?
A. Yes, sir.
Q. Did he employ a gang of laborers?
A. No, sir; I paid a man for unloading the boat $256.
Q. That was to assort it and carry it off to the different piles?
A. Yes, sir.
Q. What labor you say you paid?
A. Labor for what?
Q. After it was so delivered and put under tarpaulins what else did you do?
A. Paid the tarpaulin men $40 for covering it.
Q. What else after—paid a watchman?
A. Yes, sir.
Q. Who is the watchman, rather the watchmen—men you hire on shore?
A. I don't know what are the rates we pay for them.
Q. Do you especially get the men from the shore?
A. Yes, sir.
Q. Do you know how many harbor police there are in the city of New Orleans.
A. I didn't know there was any. I didn't discover any.
Q. You never saw any on the wharf there?
A. I saw plenty of police there. They are not watching my cargo.
Q. Do you want the whole harbor police to look after your cargo?
359 A. I would not put a sack down and depend upon the harbor police.
Q. Why?
A. Because it would be gone.
Q. You would be afraid they would steal it?
A. I would not trust them too far.
Q. Your idea of the harbor police is that you think they are thieves?
A. No, sir; I did not say that.
Q. Your inference is very plain.
A. I said I would not hire them to watch my cargo.
Q. Is it your idea that they are not able, efficient to watch a cargo?
A. I suppose if they were appointed for that purpose, given a cargo in charge, they would be efficient, I suppose, to do it.
Q. Don't they do that?
A. No, sir.
Q. How do you know that statement to be true?

A. We never have been so informed; never used them as such.

Q. Did you ever see the ordinance of this city in regard to wharfage?

A. I have the ordinance in my pocket now.

Q. Have you carefully read it over—did you read it over to testify here this evening?

A. No, sir; I never knew I was coming here until 12 o'clock to-day.

Q. How did you come to have the wharf ordinance in your pocket?

A. Because I thought I would need it when I came over here.

Q. Where did you get it from?

A. I got it from the man who was collecting the wharfage to-day.

Q. Then you call that receipt for your wharfage the ordinance?

A. Here it is in my pocket.

360 Q. It is simply the different rate of charges for steamboats.

A. That is all we know.

Q. Then you never read the ordinance of the city relative to the harbor police?

A. I have never been bothered much with the harbor police.

Q. Have you ever called on the wharfinger to give you ample room for your boat?

A. I landed my boat——

Q. Did you ever call on the wharfinger?

A. Yes, sir.

Q. Do you think that a service or no service?

A. Yes, sir; it was a service.

Q. Do you think that it is proper in a large port that there should be such an officer to conduct and direct you in such a case?

A. I suppose there would have to be somebody to look after us.

Q. Do you think that these men are willing to give their services for nothing; to charge no compensation?

A. No, sir.

Q. Do you know how long the wharf in the parish of Orleans is?

A. I have been told it was 6 miles.

Q. Does it not require a great many men to run that wharf or don't it?

A. A great many to collect the wharfage—from the amount they collect.

Q. We attend to that.

A. I see you do.

Q. Don't it take a great many men to take care of the boats?

A. If they were all like my boat I think they would take care of themselves.

Q. Suppose you had 5,000 bales of cotton to be delivered at New Orleans, how long would it take to put it out?

A. Put it out in one day.

Q. Could you put it out in Cincinnati in one day?

361 A. No, sir; would not try it.

Q. Why?

A. Because we put out as fast as they haul it away.

Q. They have to haul it away as fast as you put it out?

A. No, sir.

Q. It has been testified in this case that a boat could deliver her cargo of five, six, or seven thousand bales of cotton in New Orleans in six or eight hours, and that at any other port on the Mississippi river or its tributaries that it could not be done in four or five times that number of hours.

A. No, sir.

Q. Is that your experience?

A. I think I could put out a cargo in St. Louis as quick as I could here.

Q. Do you find any wharf-boat large enough there for that number of bales?

A. No, sir.

Q. Is not the wharf at St. Louis very steep?

A. No, sir; not very steep.

Q. It is the same kind of bank as at Cincinnati?

A. No, sir; it is paved with stone; it is paved with square limestone blocks.

Q. Is there not very great difficulty in vehicles hauling from those wharves up to the level streets the various portions of the cargoes of vessels that are delivered on the wharf-boats?

A. I suppose it is heavy hauling, but they get up there; the teams, I think, they haul there to the same amount of bales.

Q. Does it cost any more for cotton teams than for ordinary teams?

A. I don't think that they are at more expense than here; drayage is cheaper there than here.

Q. How does the levee look lit with electric lights?

362 A. It throws a mighty dark shadow on the wharves for one to land.

Q. A great many pilots say it is a vast assistance. Are you a pilot?

A. Yes, sir; I am.

Q. Have you landed your boat as a pilot?

A. Yes, sir; I stay on the hurricane deck and land the boat; nobody lands it but me.

Q. You find a great deal of difficulty in landing on account of the lights?

A. I find the shadow is worse—it throws out in the river.

Q. Can you judge from the electric lights where the different streets are?

A. I use the light in the tower.

Q. On what?

A. The Canal street tower.

Q. You see the electric lights all along the levee?

A. Yes, sir; all along there.

Q. You can judge from them where the various streets are?

A. I know the streets pretty well in New Orleans.

Q. What is the reason that you roll your freight out from the apron of the wharf back two or three hundred feet?

A. Because we have to do it for room; they don't allow us to put too much freight on the wharf.

Q. Is that an accommodation to have so much room on which to place and assort your cargo?

A. I never went to a town yet in which I didn't have the privilege of putting freight out; had plenty of room.

Q. Whereabouts?

A. Put the freight out on the wharf at — and in the elevator.

Q. In the elevator; what is the class of freight that you put in the elevator?

A. Everything that we take; all kinds of cargo.

363 Q. What do you pay for the use of the elevator?

A. That I cannot tell you; but it is less than the watching and tarpaulins; and we get a check for our money when the freight is in the elevator.

Q. Now, you have testified that you paid $9.65 at Cincinnati for wharfage, for the wharf-boat $40, as a general rule, which makes $49.65—say, makes $50 in round numbers; and that you pay here $64.20. What is the difference in the cost of building the wharves and repairing the wharves and keeping the wharves in repair between Cincinnati and New Orleans?

A. That I cannot tell you.

Q. What kind of a bank is there in front of New Orleans?

A. Mud; sand.bank.

Q. Is it stable or caving?

A. It is a filling up bank right here.

Q. Does it make or waste away?

A. Makes.

Q. Where?

A. In front of where we land.

Q. It requires the wharves to be constantly extended to cover in that space?

A. I suppose they have to extend them every few years.

Q. How about in the second district?

A. I cannot tell you.

Q. How about in the third district, where it caves in every year, and new wharves are required to be built?

A. I suppose that is all so. I cannot tell you.

Q. How about in the fourth district, at the foot of Soraparu street, where the bank is continually caving summer and winter?

A. I don't know that street; I don't know anything about the wharves there.

Q. What is the cost of the amount of piles that has to be driven on which they erect the foundations of the wharves?

364 A. I would have to find out. I don't know.

Q. What is the cost of the planks?

A. The planks are worth about $10 or $12 a thousand.

Q. Have you ever bought any?

A. Well, I have seen men buying them.

Q. When?

A. I saw Captain Pickles buying plank.

Q. What was the thickness of those plank?
A. I suppose two-inch plank.
Q. What was the width?
A. Width one foot.
Q. The general length?
A. That I cannot tell you; twelve or fourteen feet, I should think, though.
Q. What was the iron worth, in the way of nails?
A. I happen to know that 6½ cents is what he paid. I saw the bill.
Q. That is for fastenings in building the wharves?
A. Yes, sir; they were. I happened to see the bill.
Q. You have said there was an eddy in the water in front of the steamboat wharves in the first district?
A. At the canal district; at the head of canal.
Q. Don't all the boats land with bow down stream?
A. Above Canal street they do; don't below Canal street; below Canal land with bow up.
Q. Why?
A. I don't know, unless on account of the eddy.
Q. What difference does it make if you land bow down or up stream?
A. The boat is easier landed with bow up stream.
Q. Does it not affect the discharging of your boats in any way?
A. No, sir; I think not.
365 Q. Do you know the value of the land in front of the steamboat landing in the district above Canal street?
A. No, sir; I don't.
Q. Do you calculate that the wharfage at Cincinnati for the use of wharf-boats is at the rate of $40 per trip?
A. No, sir; I don't.
Q. You have said so, Captain?
A. No, sir.
Q. You mean, do you not, that the wharf-boat—that your company owns it, and it does not cost you that much?
A. No, sir; it does not.
Q. But for other boats that are not in your line, it costs them $40?
A. I am talking about our line of boats.
Q. We are speaking of other boats; other boats pay $40 for landing and discharging there?
A. Yes, sir.
Q. Now, calculating $40 for each of your 17 boats a trip, how many trips do your New Orleans boats make a year to Cincinnati?
A. I suppose they would average 8 trips.
Q. How many do your Memphis boats make per year to Cincinnati?
A. About 20.
Q. Each?
A. Yes, sir; about 20 each.
Q. There is no profit there?
A. The wharf-boat is a good thing; I won't deny that; it pays 20 per cent.; I acknowledge that.

Redirect examination by Judge KENNARD:

Q. How much do you pay your watchmen in New Orleans, and how much do you say you pay in Cincinnati?

A. I think we pay $2.50 a night here and $1.50 in Cincinnati; $1.50 to $2, according to who you get.

366 Q. Don't you pay more than $2.50 here?

A. It may be $2.50 to $3; I cannot say exactly, because I have not noticed lately.

Q. You don't have any tarpaulin expense in Cincinnati?

A. No, sir; we own what tarpaulins we use.

Q. No skids?

A. Yes, sir.

Q. More here?

A. Yes, sir.

Q. What is about the average tarpaulin expense here?

A. Forty dollars is our contract.

Q. With the tarpaulin men?

A. Yes, sir; I think every boat in the line has about the same contract.

Q. How much for skids?

A. That I don't recollect—what the price is; what it is; well, I should think it was $20; I think I pay $20.

Recross-examination by Mr. BENEDICT:

Q. You are speaking of dry freight?

A. We cover all our cargo.

Q. Don't cover your pork?

A. We carry some cotton.

Q. Don't cover your whisky?

A. No, sir.

Q. Don't cover your pork?

A. No, sir; it comes to the same thing; the contract is so much a trip to cover everything.

367 EXHIBIT "A," referred to in the affidavit of E. A. Burke, made before me April 7th, 1882, in the matter of O. & M. R. P. Co. *vs.* Mrs. C. A. Aiken *et als.*, U. S. C. C't, E. D. of La. N. O., April 1, 1882. Mark Breeden, Jr., notary public, parish of Orleans, La.

Remarks of E. A. Burke, Administrator of Improvements, to the City Council on the Subject of the Lease of the Wharves.

The importance of your action upon the propositions for "lease of the wharves" must be my only excuse for again seeking to place before the council the views that have heretofore induced me to oppose the ordinance, and that now indicate the propriety of submitting information that should, in my opinion, have been sought for before acting upon so grave a matter.

The arguments used in favor of the lease are:

First. That experience has proven that city work can be per-

formed under the supervision of private contractors cheaper and more thoroughly than by the officers of the government elected by the people.

Second. That the past history of the wharves since 1852 shows a decided loss under city management and a large profit during the period they were leased.

To the first argument I beg to say that an examination of the records of the city government do not bear out the assertion. The proceedings of the city council, reports of committees and city surveyor of every administration under which the contract system has prevailed will show constant litigation and complaints, and during the administration of Mayors Waterman, Stith, and Monroe the system is repeatedly criticised.

The interest of the contractor ever lies in avoiding the requirements of his contract, thus decreasing his expenses and increasing his profits.

The true remedy seems to be in the selection of faithful, energetic officers.

Let us glance at the second argument, which is based upon
368 the statements said to represent the receipts and expenditures for several years past:

April 12, 1852, to December 31, 1854, collections by city	$745,227 76
Two years and eight months' expenses	676,385 76
Net revenue	$68,842 00

Upon examination I find that Mayor Waterman reports in 1857 as follows:

The cost of maintaining the wharves and levees from 1852 (the date of consolidation) to October, 1855, the date of the sale, as well as the revenues derived during the same period, is shown by the statement below:

Wharves and Levees.

Years.	Expended.	Years.	Received.	Remarks.
1852	$134,051 66	1852	$191,341 49	The year 1855 embraces only to 1st of October, the date of the sale of the lease.
1853	271,894 05	1853	274,154 82	
1854	267,117 21	1854	279,654 35	
1855	98,010 97	1855	216,583 36	
	$771,073 89		$961,734 02	
			771,073 89	
Net amount of receipts			$190,660 13	

I prefer to accept the latter statement, as it agrees with the proceedings which show that the first lease went into effect October 1, 1855.

The records show that immediately after consolidation the wharves were rebuilt anew and large amount of batture was re-

claimed. Notwithstanding these heavy expenditures, three years and nine months exhibit net receipts of $190,660.13.

The first lease of the wharves was from October 1, 1855, to September 30, 1858, a period of three years.

The revenues of the wharves were accordingly sold by sections, as follows:

First section	$40,100 00
Second section	154,000 00
Third section	123,000 00
Fourth section	60,000 00
Fifth section	78,000 00
Sixth section	87,351 86
Total	$542,451 86

369 The expenditures by the city for this period appear light, say, $11,202.94. This statement may appear quite satisfactory upon its face, but mark the actual state of affairs.

July 21, 1857.—Mayor Waterman reports wharves in wretched condition, and high time the council should take the matter into serious consideration; recommends either to compel a compliance with conditions of the lease or annul the contract.

July 21, 1857.—Report of committee on streets and landings; also city surveyor, showing bad condition of wharves.

October 12, 1857.—City surveyor again reports wharves in wretched condition, and that it is impossible for him to prevail upon the lessees to put them in order.

October 27, 1857.—Upon report of chairman of committee of streets and landings the contract with the lessees of the first, fifth, and sixth sections was annulled for neglect in failing to keep the wharves in order.

December 14, 1857.—Sugar landing in bad condition; surveyor ordered to purchase materials and repair it.

August 25, 1858.—Mayor Stith demands the speedy repair of the wharves, and charges the lessees with neglect and default; council authorizes the city surveyor to have the wharves put in order.

October 12, 1858.—Surveyor's report after the expiration of first contract: Nearly all the lessees in default; wharves in bad condition; had to be rebuilt at the expense of the city, which should then endeavor to make money out of the lessees; old lessees have either neglected or refused to comply with specifications; notice was served upon them to make detailed report of condition.

February 1, 1859.—Surveyor reports expenditures for repairs of wharves that should have been done by old lessees.

I observe in the early part of 1859 an expenditure of $128,687.63, which was doubtless caused in the winter of 1858 before the second lease was made. No record can be found of damages having been recovered from the lessees, but it is fully shown that the wharves were surrendered unfit for the purposes of commerce after three years of protests from the shipping community and city officials. The second lease was from the first of October, 1858, and was to

continue for a period of four years and nine months, expiring on the first of July, 1863. The effect of the war upon the ship-
370 ping interests, however, induced the lessees and council to virtually terminate the lease on the thirtieth of May, 1861, in the following manner:

(No. 5631.)

Whereas the lessees of first, second, fourth, fifth, and sixth sections of the city wharves have petitioned the common council for relief, inasmuch as, owing to the war which is now being waged by the Northern Government against the South and the existing blockade of this port, they are deriving no profit, benefit, or advantage from their contract, but, on the contrary, are suffering daily a heavy pecuniary loss:

And whereas the said lessees have made the following proposition, which is just and equitable, to wit:

That they, the lessees, propose to make the necessary repairs to the wharves comprised in the aforementioned sections of the port, and continue their lease, provided the city guarantees to make their revenues for the year 1861 the same as the average revenue of the two previous years, deducting at the rate of $20,000 per annum for less amount of repairs required and profits that might be realized, the said lessees promising to pay their five notes, due on first and fourth of June, 1861, and amounting in the aggregate to $17,540.20, the deficit in the revenues above referred to to be deducted from the notes of said lessees that may become due after the said first and fourth of June, 1861, until the termination of the existing war and the resumption of business: Therefore, be it

Resolved, That the city of New Orleans hereby accept the abovementioned proposition of said lessees, it being well understood that the city shall be the sole judge as to when such resumption of business shall take place, and all repairs which may become necessary shall be made by said lessees under the supervision and direction of the city surveyor.

Resolved further, That the mayor be, and he is hereby, authorized to sign the necessary act or acts, to be passed before the city notary, to carry into effect the provisions of this ordinance.

(Signed) LEA F. BAKEWELL,
President Board of Assistant Aldermen.

(Signed) J. O. NIXON,
President Board of Aldermen.

Approved June 1, 1861.

(Signed) JOHN T. MONROE, *Mayor.*

A true copy.

W. S. PETTINGILL,
Secretary to Mayor.

In the meantime the lessees apparently continued to collect the revenues, failed to make the necessary repairs, and the subject was doubtless overlooked until May 14, 1862. A resolution was adopted

under which all of the notes of the lessees bearing date after June 1, 1861, were returned, to amount of $435,310.94, and in addition thereto the sum of $81,944.96 was paid to lessees under compromise.

The second lease, therefore, appears to have resulted as follows, viz:

371 *Receipts — Second Lease.*

October 1, 1858, to January 1, 1859		$55,370 00
January 1, 1859, to January 1, 1860		221,472 00
January 1, 1860, to January 1, 1861		221,472 00
		$498,314 00
January 1, 1861, to June 1, 1861		36,350 10
		$534,664 10
Expenditures:		
1859	$128,687 63	
1860	35,461 21	
1861	2,193 71	
	$166,342 55	
Repaid under compromise	81,944 96	
	$248,287 51	248,287 51
Net revenue, 2 years 8 months		$286,376 59

June 5, 1862.—Report of the committee on streets and landings: "That they have made an examination of the wharves, and find the same requiring extensive repairs and report the following resolution: 'That the surveyor be, and he is hereby, authorized to advertise fifteen days in the official journal that he will receive sealed proposals for furnishing to the city timber and lumber for the repairs of the wharves, said timber and lumber to be furnished according to specifications on file in his office.'

"Adopted."

Thus we find that upon the the termination of both the leases the wharves are left utterly unfit for the purposes of commerce.

The following is an approximate estimate of the collections and expenses from June 1, 1861 (the actual termination of the second lease), to December 31, 1865, showing an excess of expenditures over receipts of $194,460.97.

It should be borne in mind, however, that these heavy expenses followed immediately upon the termination of the second lease, and *was* apparently rendered necessary by the condition in which the lessees left the wharves:

City Collections, Etc.

From June 1, 1861, to December 31, 1861	$200 00
From January 1, 1862, to December 31, 1862	4,819 96
372 From January 1, 1863, to December 31, 1863	74,891 97
From January 1, 1864, to December 31, 1864	106,124 19
From January 1, 1865, to December 31, 1865	130,838 84
	$316,874 96

Expenses:

1862	$17,829 16	
1863	157,372 06	
1864	141,935 66	
1865	194,199 05	
		511,335 93
		$194,460 97

The following statement shows receipts and expenditures from January 1, 1866, to April 4, 1870:

City collections, 1866	$195,007 72
City collections, 1867	203,472 25
City collections, 1868	227,698 65
City collections, 1869	191,456 18
January 1 to April 4, 1870	82,290 87
	$899,925 67

Expenses:

1866	$667,991 61	
1867	392,425 18	
1868	320,741 65	
1869	51,876 68	
January 1, 1870, to April 4, 1870	15,230 84	
Paid collector, 1866, 1867	9,187 37	
Paid collector, 1867, 1870	29,069 75	
Certificates, 1869	100,000 00	
Total expenses	$1,586,523 08	
Total receipts	899,925 67	
Total excess of expenditures		$686,597 41

I cannot account for these enormous expenditures, even admitting that after the termination of the war all the wharves had to be rebuilt and remodeled, and doubtless vast quantities of batture had to be filled, graded, and shelled, and with labor high and lumber purchased at $30 per thousand in 1866.

373 I believe during this period there was interference by the military authorities with the municipal government, and that abrupt changes were made.

Statement from April 4, 1870, to December 31, 1874.

Expenditures:	
Wharf improvement bonds	$1,044,000 00
Interest paid on same	201,054 50
Cash paid, four years nine months	796,610 01
	$2,041,664 51
Collections, 4 years 9 months, $253,963.56 per year	1,206,326 84
Excess of expenditures	$835,337 67

I can readily understand that the startling expenditures of the past nine years are well calculated to cause the administrators to look with favor upon a proposition that would apparently protect the public from the effects of like improvidence, but I claim that the remedy lies in your own hands. I claim that the frauds and extravagances of the past should not be the criteria by which you should be content to be judged. The people have placed you in office with ample power and pay, expecting you to devote your best energies to reducing the evils of which they justly complain. I have been thus explicit with regard to the past in order that you may know the disease and apply the remedy.

I beg to submit for your consideration the attached report of the city surveyor, prepared after a careful personal examination, and I desire now earnestly to assure the members of this council that these facts and figures are brought forward through no spirit of factious opposition to the will of the majority, but under a sense of responsibility growing out of the fact that the department most affected by your action in this matter is under my charge, and that you have a right to expect at my hands any information necessary to aid you in forming [a] correct judgment.

I propose to show clearly the time within which the city can pay off the wharf debt, and at the same time keep the wharves in repair and pay the proper expenses of collection. If you find that these objects can be attained within a shorter period, I shall interpose no factious opposition to your action. On the other hand, if the bids be not acceptable, I would urge that you adopt the ordinance
374 heretofore presented by me, devoting the revenues, first, to the maintenance and repair of wharves, collection of revenue, and the residue to the purchase of the wharf bonds from the lowest bidder. Your legal right to do so is clear, and it is but equitable and just.

The wharf bond, in my opinion, depends upon the equities alone for its redemption. In the law it has but a doubtful status.

We may not be clear as to transactions occurring in the dim past or during the vicissitudes of war, but every honest man in this community must admit that the expenditure of $2,041,614.51 in four years and nine months for work that should have been performed for less than $500,000 in cash smacks of fraud or improvidence so grave as to taint the paper that represents it.

One great cause of the present expense attending the construction and repair of our wharves arises from the fact that year after year, as the batture accretions have formed, the wood-work has been extended. According to the surveyor's report, the wharves of the city now contain 14,908 squares, from which deduct wharves kept in repair by elevator, R. R. Co., etc.—1,582 squares—leaves 13,326 squares of the wharves to be kept in repair by the city.

Should some unforeseen calamity sweep away all the wharves and it should become necessary to rebuild them all anew, the 13,326 squares would not cost more than thirty dollars per square—by contract, $399,780. At the present cash prices of lumber and timber the city can rebuild them all anew for less money, and I would give bond and security to guarantee it.

The surveyor's report shows the number of each post or wharf, total squares in each wharf, what number of squares can be filled and made permanent, what work would be required on remaining wood-work for coming year, cost of filling batture, cost of bulkhead, cost of repairs to remaining wood-work, total cost of work for coming year to fill the batture wherever it can be filled, and to repair the balance of wood-work.

The total cost of filling, grading, and ballasting the batture in four districts, 6,164 squares	$39,684 00
Cost of bulkheads for same	13,533 00
Repairs on remaining wood-work	46,835 00
Total expenditure for coming year	$100,052 00
To which add expenses, collection, etc.	20,000 00
	$120,052 00

375 If the filling should be done as proposed there will be 13,326 squares.
Less the squares to be filled 6,164 "

Leaving wood-work 7,162 squares.

Estimating the cost at thirty dollars per square to rebuild all wood-work after filling, $214,860.

It has been customary to estimate the wear and tear upon a wharf at twenty per cent., allow for caving banks, and estimate a wharf to last four years, or wear and tear twenty-five per cent. on $214,860	$53,715
Cost of collection, etc.	20,000
Total expenditures second year	$73,715

In order to ascertain the time within which the city can pay off the wharf debt with her revenues, we may estimate in round numbers:

First year, estimated revenues		$225,000
Expenses of repairs, filling batture, etc.	$100,000	
Judgment	16,000	
Expenses, department of commerce	20,000	
Interest	50,000	
Repurchase $72,222 bonds, at 54c.	39,000	
		225,000
Second year, estimated revenues		225,000
Expenses, repairs, filling, etc.	$53,715	
Expenses, department of commerce	20,000	
Judgment	16,000	
Interest on $609,778	44,513	
$168,096 bonds, at 54c.	90,772	
		225,000
Third year, estimated revenues		250,000
Estimated expenditures, repairs	$53,715	
Estimated expenditures, department of commerce	20,000	
Judgments	16,000	
Interest on $441,682	32,242	
Repurchase $237,116 bonds, at 54c.	128,043	
		250,000
Fourth year, nine months' revenues		187,500
Expenditures, repairs	$40,286	
Expenditures, department of commerce	15,000	
Expenditures, judgments	12,000	
Interest on $204,566 bonds, at 7.3c.	10,976	
Repurchase $204,566 bonds, at 54c.	110,465	
		188,727

It has been said that I am ambitious and loth to part with power. I believe that this administration should be ambitious to win
376 the name of honest, efficient, public servants, and a greater opportunity was never presented to any eight gentlemen. The enormous expenditures of the past ten years have placed upon the people of this city an additional burden of twelve millions of dollars. Do you not feel assured that the people have not received five millions of benefit? And yet this debt but represents the excess after extraordinary taxation has been imposed.

This council should be ambitious to present to the people a comparative statement contrasting an economical and efficient discharge of the public trust with the improvidence of the past. Take, for instance, the expenditures upon wharves for the past ten years:

Total expenditure, bonds and cash		$3,976,622 28
Estimated expenditures for coming one year	$100,052	
Estimated expenditures for subsequent 9 yrs.	737,715	
		837,767 00
Saving to the people by economy, 10 years		$3,138,255 28

Or enough to secure a railroad to Texas and provide shed protection for all your steamboat and barge wharves.

In my opinion the people expect at your hands a careful scrutiny of the existing obligations of the city, in order that they may judge of the equitable as well as the legal liability to the holders of obligations that represent the errors of the past. This council should be slow to place the seal of its approval upon obligations that were either issued in fraud or without due consideration having been given.

If I can read aright the sentiment of this community, it is an honor-loving community, jealous of its fair name and commercial repute, but the mountain of debt has been piled so high that the people groan under the burden; and, as the holders of its bonds and obligations are flying to the courts in order to seize upon the assets of the city, it is time that the facts connected with these issues should be placed before the people and the world. When bondholders and citizens know these facts I have no doubt that the citizens of New Orleans will act toward her creditors in such a manner as will be consistent with their honor and equitable to those whom she may owe. I deem it advisable to turn over to a questionable creditor the most valuable and important franchise of the city, practically making them preference creditors.

377 In reply to the administrator of commerce, I beg to say that the receipts from January 1, 1875, to May 1, 1875 $65,512 89

Expenses from January 1, 1875, to May 1, 1875, pay-roll department of commerce		$5,839 92	
Labor and cart hire, improvements	$29,040 58		
Less contingent	8,764 23		
		20,276 35	
Materials for repairs	13,520 78		
Less contingent	6,626 98		
		6,893 80	
Cost of lower steamship wharf		16,410 44	
			49,420 51
Total excess of receipts			$16,092 38

Statement of City Surveyor of Work Required on the Wharves and Landings for the Coming Twelve Months.

FIRST DISTRICT.

Number of post.	Total squares at present.	No. squares can be filled and made perm'n't.	What work is required on remaining squares for coming year.	Cost of filling and grading at 30 cts. per cubic yard.	Cost of bulkhead for filling at $1 per foot.	Cost of repairs for coming year.	Total cost.
1, 2	393	225	No work, s'boat l'd'g.	$1,350	$321	-------	$1,671 50
3, 4, 5	1,296	560	No work, s'boat l'd'g.	3,360	800	-------	4,160 00
6, 7, 8	817	625	No work, s'boat l'd'g.	3,750	893	-------	4,643 00
9	373	175	No work at present	1,050	251	-------	1,301 00
10, 11	490	292	No work at present	1,752	418	-------	2,170 00
12, 13	542	292	No work R. R. wharf.	1,752	418	-------	2,170 00
14	282	262	25 per cent.	1,572	210	$250	2,032 00
15	715	662	Patching	3,972	530	350	4,852 00
16	111	100	No work J. R. R.	600	81	-------	681 00
16½	109	105	Patching	630	81	250	961 00
17	117	80	Patching	480	80	400	960 00
18	100	90	Patching	540	81	300	921 00
19	94	85	Patching	510	81	200	791 00
20	83	70	Rebuild.	420	80	500	1,000 00
21	85	65	Patching	390	81	325	796 00
22	55	45	Rebuild.	270	84	450	804 00
23	197*	95	-------	570	190	-------	760 00
24	52†	18	Rebuild.	108	35	1,020	1,163 00
25	56‡						
26	51	42	New flooring	252	73	100	425 00
27	57	35	Patching	210	72	250	532 00
28	63	42	Patching	252	72	250	574 00
29	58	48	Patching	288	81	200	569 00
30	51	35	New flooring	210	50	100	360 00
31	69	50	Rebuild	300	74	750	1,124 00
32	65	50	New flooring	300	73	100	473 00
33	59	35	Rebuild	210	71	750	1,031 00
34	62	20	New flooring	120	71	250	441 00
35	69	32	New flooring	192	79	200	471 00
36	71	24	Patching	144	80	250	474 00
37	71	32	Patching	192	80	225	497 00
38	76‡						
	6,789	4,291		$25,746	$5,591	$7,470	$38,807 50

* Coal Co. † Nuisance. ‡ Abandoned.

Number of post.	Total squares at present.	No. squares can be filled and made permanent.	What work is required on remaining squares for coming year.	Cost of filling and grading at 30 cents per cubic yard.	Cost of bulkhead for filling at $1 per foot.	Cost of repairs for coming year.	Total cost.
Canal to Bienville	683	221	Patching	$1,326	$738	$300	$2,364
Bienville to Conti	394	159	Patching	954	532	150	1,636
Below Conti, steamboat	110	50	Patching	300	167	100	567
St. Louis S. S. l'd'g	284	111	Patching	666	370	200	1,236
St. Louis to St. Ann	621*	228	Nothing	1,368	762	----	2,130
St. Ann to St. Philip	726	315	Patching	1,890	631	300	2,821
16	119	42	Rebuild	252	140	2,500	2,892
17	85	52	Rebuild and extend.	312	176	1,500	1,988
18	105	60	Nothing	300	121	----	481
19	107	24	Nothing	144	80	----	224
20	53†						
21	76	22	Moulton repairs.	132	75	----	217
	3,313	1,284		$7,704	$3,792	$5,050	$16,546

* Cromwell. † Aband'nd.

THIRD DISTRICT.

Number of post.	Total squares at present.	What number of squares can be filled and made permanent.	What work is required on remaining squares for the coming year.	Cost of filling at thirty cts. per cubic yard.	Cost of bulkhead for filling at one dollar per foot.	Cost of repairs for coming year.	Total cost.
22	58*						
23	64†	16	Nothing	$96	$81		$177 00
24	59	16	Nothing	96	81		177 00
25	60		Rebuild			$1,800	1,800 00
26	50		Nothing.				
27	71		Nothing.				
28	64		Rebuild			1,920	1,920 00
29	62		Nothing.				
30	60		25 per ct.			450	450 00
31	82‡						
From centre of cotton press to Clouet St.	645		Nothing.				
37	67		25 per ct.			500	500 00
38	58		25 per ct.			435	435 00
	1,400	32		$192	$162	$5,105	$5,459 00

* Ferry. † Cooper. ‡ Aban'd.

Number of post.	Total squares at present.	What number of squares can be filled and made permanent.	What work is required on remaining squares.	Cost of filling at thirty cents p'r cubic yard.	Cost of bulkhead for filling.	Cost of repairs.	Total cost.
39	63	23	Patching	$138	$79	$150	$367 00
40 to 44, inclusive	986	329	Rebuild	1,974	1,098	19,710	22,782 00
45	75	65	Rebuild	390	220	300	910 00
46	228	102	Rebuild	612	341	3,780	4,733 00
47 and 48	296	85	25 per cent.	510	425	1,580	2,515 00
49	75	17	New flooring.	102	87	300	489 00
From First to Second Sts.	209	58	Nothing	348	293	.....	641 00
From Second to Third	145	46	Nothing	276	231	.....	507 00
From Third street	54	13	Nothing	78	68	.....	146 60
	96	28	20 per cent.	168	143	450	761 00
Wharves from	60	13	20 per cent.	78	66	300	444 00
Third to middle	153	45	20 per cent.	270	228	600	1,098 00
block between	61	16	20 per cent.	96	81	270	447 00
Washington	132	40	20 per cent.	240	200	550	990 00
and Sixth Sts.	112	30	20 per cent.	180	153	500	833 00
	70	18	20 per cent.	108	90	310	508 00
Wharf bet. Sixth and Seventh Sts.	75	32	20 per cent.	192	81	260	533 00
Wharf opposite Eighth St.	80	42	Patching	252	84	150	486 00
Elevator wharf	383						
Nuisance wharf	53	5	Nothing	30	20	.....	50 00
	3,406	1,007		$6,042	$3,988	$29,210	$39,240 00

380 *Motion to Amend Bill. Entered & Filed May 28th, 1883.*

U. S. Circuit Court, Fifth Circuit, Eastern District of Louisiana. In Equity.

OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
vs.
Mrs. C. M. AIKEN, Adm'x, *et al.*
No. 9878.

On motion of Kennard, Howe & Prentiss and Chas. S. Rice, of counsel for complainants, and upon suggesting to the court that the following-named parties in the bill herein filed, described as Alexander M. Halliday, Christian G. Young, and Mrs. Hall (widow of——) whose full name is unknown, all of Cincinnati, in the State of Ohio; also Edwin Hornbrook and T. C. Sweeny, of the city of Wheeling, in the State of West Virginia, are citizens, respectively, of the States of Ohio and West Virginia, and upon further suggesting that the parties made defendants in said bill, and therein described as residents of New Orleans and Algiers, are citizen of the State
381 of Louisiana:

It is ordered that the complainants have leave to amend their bill by adding thereto that the parties hereinbefore mentioned are respectively citizens of the States of Ohio, West Virginia, and Louisiana in the first paragraph of said bill.

Petition of the New Orleans Anchor Line. Filed May 28th, 1883.

U. S. Circuit Court, Fifth Circuit, East. Dist. of La. In Chancery.

OUACHITA & MISS. RIVER PACKET COMPANY
vs.
Mrs. C. M. AIKEN *et al.*
No. 9878.

The petition of the "New Orleans Anchor Line," a corporation created by and existing under the laws of the State of Missouri and a citizen of said State, respectfully shows that said corporation is the owner of the following steamboats, which ply between the port of New Orleans and other ports on the Mississippi river, chiefly
382 from New Orleans to the port of St. Louis, to wit: "City of St. Louis, City of Baton Rouge, Jno. A. Scudder, City of New Orleans, and Wm. P. Halliday."

And that as owners of said steamboats it has paid under protest since the commencement of the lease made by the city of New Orleans to the defendants in this bill of complaint the same wharfage as has been paid from time to time by the complainants in said bill—that is to say, wharfage at the same rate.

That, availing itself of the right accorded by said complainants, The Ouachita and Miss. River Transportation Company, in the first paragraph of their bill, petitioner prays to be allowed to make itself a party hereto, and to assert the same rights and to crave the same relief with respect of the wharfage taxes in said bill complained of; and, adopting all the allegations of said bill and adding thereto the

allegation that the defendants are citizens of the State of Lou-
383 isiana, your petitioner prays for all and singular the same relief as prayed for by the original complainants.

Wherefore your petitioner prays that this *his* petition may be filed, and that it may have leave to join the complainants herein; that the injunction as prayed for by said complainants may be granted and extended to your petitioner's boats in common with all others, and all the relief of any and every kind prayed for in said bill may also be decreed as well in favor of your petitioner as of said complainants, and for all general and equitable relief.

(Signed) JOHN H. KENNARD, *Solicitor.*

John H. Kennard, sworn, says that he is of counsel for complainants here; that said complainants are absent from the State, and that the allegations herein contained are true to the best of affiant's knowledge and belief.

(Signed) JOHN H. KENNARD.

Subscribed & sworn before me May 28, '83.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court.

384 *Complainants' Note of Evidence. Entered and Filed May 28th,* 1883.

9878. U. S. Circuit Court.

Complainants' note of evidence

(1.) Printed record of testimony for complainants', 233 pages, particularly—

Exhibit A, at p. 221, and
E. A. Burke, 104–118, 150–167.
C. A. Eager, 30–63.
Henry Ellerman, 63–104.
Capt. Carter, Anchor Line, 118–150.
" Halliday, 192–221.

Eager, Ellerman & Co.'s contract offered by defendants, especially the requirements as — wharf bonds (old) which they had to pay, which requirement was illegal and increased the rate of charge.

Capt. F. A. Blank, 24–27.

The photographs were made *ex parte* and no consent exists making them evidence; they only cover a small fraction of the city's front.

(Signed) KENNARD, HOWE & PRENTISS.
CHAS. S. RICE.

Defendants' Note of Evidence. Entered & Filed May 28th, 1883.

385 9878. U. S. Circuit Court.

Defendants' note of evidence.

Acts of La., 1836, pages 33–36.
Do. 1870, " 35.
Do. 1871, " 147.
Do. 1882, new charter.
Contract with city, May 31, 188[illegible].
Am'd " " Oct. 3d, "
" " " Dec. 7, "
Eager, Ellerman & Co., contract 1875.
Do. supp'l contract 187–.
Photographs on file in 9573.
City ordinance of 1875, Jan'y 19th.
" " 1881, May 17th.

Also all evidence & exhibits in printed record for respondents. See its "index."

Also all exhibits on file in 9573 not hereinbefore specially offered.

Plan by L. H. Pilié.

Hearing & Submission of Cause.

Extract from the Minutes, April Term, 1883.

NEW ORLEANS, MONDAY, *May 28th,* 1883.

Court met pursuant to adjournment.

386 Present: Hon. Wm. B. Woods, circuit justice; Don A. Pardee, circuit judge.

OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
vs.
Mrs. C. M. AIKEN, Adm'x, *et al.*
} No. 9878.

This cause came on to be heard at this term on the bill, answer, replication, and other proceedings in the cause.

Whereupon the complainants offered the following evidence in support of their bill, to wit:

Printed record of testimony for complainants, 233 pages, particularly—

Exhibit A, at page 221.
E. A. Burke, 104–118, 150–167.
C. A. Eager, 30–63.
Henry Ellerman, 63–104.
Capt. Carter, Anchor Line, 118–150.
" Halliday, 192–221.

Eager, Ellerman & Co. contract offered by defendants, especially the requirements as — wharf bonds (old) which they had to pay, which requirement was illegal and increased the rate of charge.

Capt. F. A. Blank, 24–27.

The photographs were made *ex parte* and no consent exists
387 making them evidence; they only cover a small fraction of the city's front.

And the defendants offered the following evidence in support of their answer, viz:

Acts of Louisiana, 1836, pages 33–36.
Do. 1870, " 35.
Do. 1871, " 147.
Do. 1882, new charter.
Contract with city May 31, 1881.
" " Oct. 3, 1881.
" " Dec. 7, 1881.
Eager, Ellerman & Co., contract 1875.
Do. supplemental contract 187–.
Photographs on file in 9573.
City ordinance of 1875, January 19.
City ordinance of 1881, May 17th.
Also all evidence and exhibits in printed record for respondents. See its "index." Also all exhibits on file in 9573 not hereinbefore specially offered.
Plan by L. H. Pilié.

And the cause was thereupon argued by the counsel for the parties respectively and submitted. Whereupon the court took time to consider.

Decree.

388 U. S. Circuit Court, Eastern District of Louisiana.

OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
vs.
Mrs. C. AIKEN *et als.* } No. 9878.

This cause came on to be heard on the bill, answer, replication, exhibits, and evidence, and was argued by counsel.

On consideration whereof it is ordered, adjudged, and decreed that the complainants' bill of complaint be, and the same is hereby, dismissed at their costs, to be taxed.

New Orleans, May 31, 1883.

(Signed) W. B. WOODS,
Circuit Justice.

Motion & Order for Appeal.

Extract from the Minutes of June 23d, 1883.

THE OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
vs.
Mrs. C. M. AIKEN *et al.* } No. 9878.

389 On motion of Kennard, Howe and Prentiss and Charles S. Rice, solicitors for complainants herein, and for the New Orleans Anchor Line, made parties hereto, and on suggesting that

movers are, as they are informed and believe, aggrieved by the final decree herein rendered on the 31st day of May, 1883, and signed on the — day of ——, 1883, dismissing complainants' bill, and that there is error to their prejudice in said decree, and that they desire to appeal therefrom, and herewith tender a proper bond—

It is ordered by the court that an appeal be allowed all of the complainants, said movers, to wit, The Ouachita and Mississippi River Packet Company, William P. Scovell, William M. Wood, Isabel O'Pry, wife, and herein joined and authorized by her husband, James T. O'Pry; James T. O'Pry, the succession of Mrs. M. E. Bassett, deceased, herein represented by William S. Bassett and Mrs. Martha Van Bitter, executors of the last will and testament of said Mrs. Bassett, deceased; Eugene Clark, P. A. Charlet, Joseph F. Aucoing, Matthew L. Scovell, Mrs. M. J. Brinker,
390 wife of and herein joined and authorized by her husband, H. J. Brinker; John Thorn, Alexander M. Halliday, Christian G. Young, Mrs. Hall, widow of —— Hall (whose full name is unknown), Edwin Hornbrook, T. C. Sweeney, Edgar M. Vallette, and said New Orleans Anchor Line, to the Supreme Court of the United States, returnable according to law on the 2d Monday of October, 1883, on their giving bond in the sum of one thousand dollars, with good and solvent security, conditioned as the law requires.

Bond for Appeal. Filed June 26th, 1883.

UNITED STATES OF AMERICA:

Know all men by these presents that we, The Ouachita and Mississippi River Packet Company, Wm. T. Scovell, Wm. M. Wood, Isabel O'Pry, James T. O'Pry, the successor of Mrs. M. E. Bassett, deceased, represented by Wm. S. Bassett and Mrs. Martha Van Bitter, executors; Eugene Charlet, P. S. Charlet, Joseph T. Au-
391 coing, John Thorn, Alexander M. Halliday, Matthew L. Scovell, Mrs. M. J. Brinker, H. J. Brinker, Christian G. Young, Mrs. Hall, widow of —— Hall; Edwin Hornbrook, T. C. Sweeney, Edgar M. Vallett, and the New Orleans Anchor Line, as principals, and William R. P. Huey, of New Orleans, Louisiana, as surety, are held and firmly bound, jointly and severally, unto Mrs. Catherine M. Aiken, administratrix of Joseph A. Aiken, deceased, John H. Menge, John J. Brown, and John W. Tobin, doing business as copartners under the firm name of Joseph A. Aiken & Co., and the city of New Orleans, in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said obligees above named, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the twenty-sixth day of June, in the year of our Lord eighteen hundred and eighty-three.

392 Whereas the said principals above named having heretofore, to wit, on the 23d day of June, 1883, taken an appeal to

the Supreme Court of the United States from and to reverse the decree rendered on the 31st day of May, 1883, by the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of the Ouachita & Mississippi River Packet Company *et als. vs.* Mrs. Catherine M. Aiken, adm'x, *et als.*, No. 9878 of the docket thereof:

Now, the condition of the above obligation is such that if the above-bounden principals shall prosecute their said appeal to effect, and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) THE OUACHITA & MISS. RIVER PACKET COMPANY,
WM. T. SCOVELL,
WM. M. WOOD,
ISABEL O'PRY,
JAMES T. O'PRY,
Succ'rs MRS. M. E. BASSET,
WM. S. BASSETT, *Ex'r*,
P. A. CHARLET,
JOS. F. AUCOIN,
MATTHEW T. SCOVELL,
MRS. M. J. BRINKER,
H. J. BRINKER,
393 MRS. MARTHA VAN BITTER, *Ex.*,
EUGENE CHARLET,
MRS. HALL,
EDWIN HORNBROOK,
T. C. SWEENEY,
JOHN THORN,
ALEX. M. HALLIDAY,
CHRISTIAN G. YOUNG,
EDGAR M. VALLETTE,
THE N. O. ANCHOR LINE,
All by KENNARD, HOWE & PRENTISS, AND
CHAS. S. RICE, [SEAL.]
Their Solicitors.

(Signed) WM. R. P. HUEY. [SEAL.]

Bond approved.
June 26, 1883.

EDWARD C. BILLINGS, *Judge.*

UNITED STATES OF AMERICA, }
Eastern District of Louisiana, } *ss:*

Personally appeared William R. P. Huey, who, being duly sworn, deposes and says that he is surety on the within bond; that he resides in the city of New Orleans, No. 597 Carondelet St., and is worth the full sum of one thousand dollars over and above all of his debts, liabilities, and property exempt from execution.

(Signed) WM. R. P. HUEY.

Subscribed & sworn before me this 26th day of June, 1883.
(Signed) T. V. COUPLAND,
394 *Comm'r U. S. Circuit Court, Eastern District of Louisiana.*

Agreement as to Transcript. Filed July 14, 1883.

United States Circuit Court, Fifth Judicial Circuit, Eastern District of Louisiana. In Chancery.

OUACHITA & MISSISSIPPI RIVER PACKET CO.
vs.
Mrs. C. A. AIKEN *et als.* } No. 9878.

In the above case it is agreed that in making up the transcript of appeal for the Supreme Court of the United States the clerk need not copy any of the testimony th*is* is already in print, and that said printed testimony now on file in this court shall be used as it is in the supreme court.

(Signed) KENNARD, HOWE & PRENTISS, AND
CHAS. S. RICE,
Att'ys for Complainants.
BAYNE & DENEGRE,
W. S. BENEDICT,
For Def'ts.

395 *Agreement as to Transcript. Filed October 2d*, 1883.

U. S. Circuit Court, Eastern Dist. of La.

OUACHITA & MISS. RIVER PACKET CO.
vs.
Mrs. C. M. AIKEN, Adm'x, &c. } No. 9878.

It is agreed and understood in this case that the transcript of appeal to the Supreme Court of the United States may be made up and certified to by the clerk without including therein the following records, documents, and papers, to wit, Eager, Ellerman & Co.'s contract, 1875, and supplemental contract; plan by L. H. Pilie; exhibits filed in No. 9573, circuit court, and any other documents forming part of the records, which have been mislaid, said documents, papers, and records being at present lost and counsel for complainants being unable to find the same. It is further agreed that no objection shall be made to said transcript on the ground that it does not contain said papers, documents, and records,
396 nor shall any motion to dismiss the appeal be made on the ground of said omission; and complainants and appellants shall have the right when said records, documents, and papers are found, or fac-simile copies, or true copies are produced, to supplement the said transcript by a supplemental transcript containing copies of the same properly certified to.

(Signed) W. S. BENEDICT,
BAYNE & DENEGRE,
Solicitors for Defendants.

397 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 396 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, excepting the exhibits in case No. 9573 offered in evidence in this case, which, being either lost or mislaid, are, by agreement of counsel on file, dispensed with on the trial of the case of The Ouachita & Miss. River Packet Co. *et al. vs.* C. M. Aiken, a'm'x, *et als.*, No. 9878 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 3d day of Oct., A. D. 1883.

Thirty-six (36) words interlined; three (3) words erased (null).

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

Approved: F. A. WOOLFLEY, *Clerk.*

I, Don A. Pardee, United States circuit judge for the eastern district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 3d day of October, A. D. 1883.

(Three (3) words interlined.

Approved: DON A. PARDEE, *Judge.*

398 UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Mrs. Catherine M. Aiken, administratrix of Joseph A. Aiken, deceased; John H. Menge, John J. Brown, and John W. Tobin, doing business as copartners under the firm name of Joseph A. Aiken & Co., and also to the city of New Orleans, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion and order for an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein the Ouachita & Mississippi River Packet Company, William T. Scovell, William M. Wood, Isabel O'Pry, wife of, and herein joined and authorized by her husband, James T. O'Pry;

James T. O'Pry, the succession of Mrs. M. E. Bassett, deceased, represented herein by William S. Bassett and Mrs. Martha Van Bibber, executors of the last will and testament of said Mrs. Bassett, deceased; Eugene Charlet, P. A. Charlet, Joseph F. Aucoin, Matthew L. Scovell, Mrs. M. J. Brinker, wife of, and herein joined and authorized by her husband, H. J. Brinker; John Thorn, Alexander M. Halliday, Christian G. Young, Mrs. Hall, widow of —— Hall, whose full name is unknown; Edwin Hornbrook, T. C. Sweeney, Edgar M. Vallette, and the New Orleans Anchor Line are appellants and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellants, as in said motion and order for an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 26th day of June, in the year of our Lord one thousand eight hundred and eighty-three.

EDWARD C. BILLINGS, *Judge.*

399 [Endorsed:] R. United States circuit court, eastern district of Louisiana. No. 9878. Ouachita & Mississippi River Packet Company *et als.*, appellants, *vs.* Mrs. C. M. Aiken, administratrix, *et als.*, appellees. Citation to appellees.

Marshal's Return.

Received June 27, 1883, by the U. S. marshal, and on June 28, 1883, I served a true duplicate of this, the original citation of appeal on the appellees herein, to wit, in the following date and manner, to wit: Mrs. Catharine M. Aiken, administratrix of Joseph A. Aiken, deceased; John H. Menge, John J. Brown and John W. Tobin, doing business as copartners under the firm name of Joseph A. Aikin & Company, by handing the same to W. S. Benedict, Esq., in person, in the city of New Orleans, the attorney of record, associated with Bayne & Denegre, they being jointly the attorneys of record for the aforesaid appellees; and on June 27th, 1883, I served a true duplicate of this the original citation of appeal on the city of New Orleans, appellee herein, by sending the same to Charles F. Buck, Esq., in person, in the city of New Orleans, city attorney, and also attorney of record for said appellees, who accepted service in behalf of said appellees.

J. R. G. PITKIN,
U. S. Marshal, East. Dist. of La.,
By E. S. CURRY,
D'y U. S. Marshal.

Personally appeared before me, E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true duplicate of this the original citation of appeal on the appellees herein named, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal.

Subscribed and sworn before me June 28, 1883.

F. A. WOOLFLEY,
Commissioner United States Circuit Court
Eastern District of Louisiana.

399½ *Supplemental Transcript.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

OUACHITA & MISSISSIPPI RIVER PACKET CO. }
v. } No. 9878.
Mrs. C. M. AIKEN *et als.* }

400 Petition in Case No. 3877, civil dist. court.

To the hon. the judges of the civil dist. court for the parish of Orleans:

The petition of Thomas P. Leathers, of the city of New Orleans, respectfully represents that he is the sole and only owner of the steamboat called the "Natchez," a vessel of upwards of nine hundred tons measurement, duly enrolled and licensed under the statutes of the United States for the coasting trade, and except, as hereinafter mentioned, engaged in carrying passengers and freight for hire from the port of New Orleans, in the State of Louisiana, to the port of Vicksburg, in the State of Mississippi, and intermediate ports and places on the Mississippi river & return; that petitioner is also the owner of an undivided third share or part in and of the steamboat called the "Edward J. Gay," a vessel upwards of five hundred tons measurement, duly enrolled and licensed for the coasting trade under the statutes of the United States, except as hereinafter engaged in carrying passengers and freight for hire from the port of New Orleans, in the State of Louisiana, to Bayou Sara, also in said State, and intermediate port and places on the Mississippi river and return; that at the present time the said Natchez is undergoing repairs, and is, therefore, until the first day of September next, withdrawn
401 from the trade hereinbefore mentioned, and is now lying in the port of New Orleans, and the steamboat Edward J. Gay, having been chartered by your petitioner, has until the date mentioned taken the place in said trade of said steamboat Natchez, and has therefore until said date been withdrawn from said trade between the ports of New Orleans and Bayou Sara; that the said steamboat Natchez, when engaged in the trade aforesaid, has been accustomed to make and will continue to make, and the said Edward J. Gay is now making and will continue to make until the 1st. day of September, 1881, weekly round voyages to, from, and between said ports of New Orleans & Vicksburg, & thereafter the said steamboat Edward J. Gay will return to and be engaged in the said trade, between the ports of New Orleans and Bayou Sara, and will make semi-weekly round voyages to, from, and between said ports; that the trades in which the said steamboats have been and will be respectively engaged have been established for many years,

and expect to be continued for many years to come, and have required and will constantly require the services of steamboats of capacity equal to or greater than that of the steamboats hereinbefore mentioned. Now, your petitioner shows that on, say the 19th day of January, 1875, the city council of New Orleans adopted an ordinance "fixing and regulating the charges for wharfage, levee, and other facilities afforded by the city of New Orleans to commerce," by which ordinance, among other matters and things, it was ordained that "the wharfage dues on all steamboats shall be fixed as follows:

Not over five days, ten cents per ton; each day after, five
402 dollars per day; boats arriving and departing more than once per week, five cents per ton each trip; boats lying up for repairs during the summer months, to occupy such wharves as may not be required for shipping, for thirty days or under, one dollar per day," said charge to — exigible from all steamboats landing or moving at the wharves furnished by the city of New Orleans; that said ordinance, which also undertakes to fix and regulate the wharf dues or charges to be paid by all sorts of vessels and craft arriving at the port of New Orleans and landing or moving at any wharf or levee in said city, is hereunto annexed and made a part of this petition. And petitioner further shows that on the 17th day of May, 1881, the city council of the city of New Orleans adopted likewise an ordinance providing for the building and repairing of wharves and levees of the city of New Orleans, and for farming the revenues thereof; that said ordinance, which is hereto annexed and made part of this petition, provides, among other things, that the administrator of commerce shall after the enactment of said ordinance, and after having given ten days' notice in the official journal that he will receive at his office sealed proposals for their sale, adjudicate as provided in sec. 26 of said ordinance, and in accordance with the other stipulations in said ordinance contained, the revenues of the wharves and levees of the city of New Orleans collectible at the rates as may be fixed upon all ships, vessels, steamships, steamboats, barges, flat-boats, and other water crafts of any and every description whatsoever for the term of five years, commencing on the 29th day of May, 1881,
403 and ending with the 28th day of May, 1886, upon the terms and conditions in said ordinance set forth; that the wharves and levees and the revenues of the same to be sold under said ordinances shall comprise the wharves already constructed and existing in the first, second, third, & fourth districts of the city of New Orleans, from Toledano street to the lower limit of the city, which is the lower line of the United States barracks, excepting therefrom all ferry and nuisance wharves and all wharves granted to the New Orleans and Pacific Railway Company, as well as the wharf granted to the N. O. Elevator Company, until such time as the present franchise expires, and excepting generally all such wharves, or portions of wharves, or of the river bank the exclusive use of which may now be enjoyed by private individuals or corporations under existing grant or lease until such time as said grants or leases may expire, after which time said lessee shall take charge of said elevator wharf or other wharves;

that the levees included in said ordinance shall be those already existing in the first, second, third, and fourth districts of the city of New Orleans, extending from the river to the line of the street fronting the river, from Toledano street in the fourth district to the lower limit of the city, and in said ordinance more specifically mentioned. And said ordinance also provides that the person or persons to whom shall be adjudicated the revenues collectible, as may
404 be provided, shall accept the wharves, levees, and landings in the condition in which the same may be on the 29th day of May, 1881, and that the said persons so accepting and taking possession of the said wharves, landings, levees, and bulkheads shall repair and always keep the same in good order and condition during the whole term of their contract. And said ordinance, as will be seen by inspection thereof, and especially of sections five, six, seven, eight, nine, ten, twelve, and thirteen thereof, provides the style and measure of repairs and of new work upon the said wharves, revetments, and bulkheads now existing or to be built under the provisions of the said act. And section eleven of said ordinance, among other things, ordains that the person or persons to whom shall be adjudicated said contract of revenues shall be bound to build all additional new wharves that may be necessary, provided that he is not required to expend on such new wharves more than twenty-five thousand dollars in any one year, the said new wharves being calculated at the rate of twenty dollars per square and no more; the said person or persons to be bound to begin by the first day of July, 1881, to build under the requirements of said section certain new wharves more specially mentioned in said section. And said ordinance also provides that the person or persons to whom shall be adjudicated said contract shall be bound to furnish all the necessary apparatus and light with electric light all the levees, landings, and wharves from Toledano street in the fourth district to Congress street in the third district, the lights, or lamps, *or lights* to be placed at no greater
405 distance than 250 feet apart, the height thereof to be determined by the city council; said lamps or lights to be lighted each and every night from sunset until sunrise; the class, quality, make, and power of said lights to be designated by said council, and at the expiration of said contract or lease the lessee or city to have the privilege of buying said electric apparatus at a value to be fixed by appraisers, of whom one shall be appointed by the city, one by said lessee, said appraisers on failure to agree to appoint an umpire; and said ordinance further ordains that the said lease or privilege of collecting said revenue shall be adjudicated to the person or persons agreeing to charge the lowest rates of wharfage or dues thereof, and to pay annually to the city of New Orleans in equal monthly payments the sum [of] $40,000.00, thirty thousand of which shall be devoted to the payment and maintenance of the harbor police for the protection of commerce, &c., along the river front of the city and the remaining ten thousand dollars to be set apart and devoted exclusively to the payment of salaries of wharfingers, contravention clerk, signal officers, and other employees on levee in connection with the department of commerce of said city, and in

connection with the foregoing to keep the wharves lighted with electric light, as already in said ordinance provided; your petitioner also alleges that the advertisement for bids when said contract, lease, or privilege mentioned in the first section of said ordinance —
406 was first published in the official journal of the city of New Orleans on the 18th day of May, 1881; that at a special meeting called upon that day for that purpose there was submitted to the city council of the city of New Orleans on the 27th day of May, 1881, and by said council adopted a proposal in writing from Joseph A. Aiken of the city of New Orleans to accept lease and contract of wharves and levees as stipulated in Ordinance No. 7079, administration series (being said ordinance of May 17th, 1881), to comply with all the terms and stipulations of said ordinance, and to charge the same rates of wharfage as stipulated in the ordinance hereinbefore mentioned, adopted January 19th, 1875, purporting to regulate and fix the charges for wharfage, the said Aiken in his said proposal declaring that he would at no time charge ocean steamships more than at the rate of fifteen cents per ton, and that for the third year of said lease he would reduce the rate on all ocean tonnage, and on all steamboats and barges & other licensed vessels employed regularly in transportation of merchandise on the Mississippi river ten per cent., and that for the fourth & fifth years he would make a reduction of twenty per cent. each year on the rates mentioned in said ordinance of January 19th, 1875, besides other matters and things in said proposal, which, with the hereinbefore-mentioned ordinances, form part of the notarial act between said city of New Orleans and said Aiken, passed before Samuel Flower, city notary, on the 30th day of May, 1881, in affirmation of his said acceptance of his said proposal and the adjudication of the contract, lease, or privilege of collecting wharfage dues or charges under the said ordinances; that by said act the said city purports to have granted, bargained, &
407 sold unto the said Joseph A. Aiken the revenues of the wharves and levees of the city of New Orleans, collectible as in said contract stated, upon all ships, vessels, steamboats, steamships, barges, flat-boats, and other water crafts of any and every description whatever, for the term of five years, commencing on the 29th day of May, 1881, and ending on the 28th day of May, 1886. A truly certified copy of said act is hereunto annexed and made part of this petition. Now, your petitioner represents that the said contract between the city of New Orleans and said Joseph A. Aiken is illegal, null and void for the following, among other, reasons: First, that it was not preceded by ten days' advertisement for proposals, as provided by said ordinance of May 17th, 1881; second, that within the ten days' delay allowed by said ordinance for proposals thereunder a proposal was presented to the administrator of commerce of the city of New Orleans, in accordance with the requirements of said ordinance and the charter of the city of New Orleans, to contract for or lease the privileges mentioned in said ordinance, upon terms greatly more favorable to the commerce of the city, inasmuch as in said proposal the bidder bound himself to reduce the charges fixed for wharfage by said ordinance of January 19th, 1875, by ten

per cent. from the outset; that in absence of other bids the city council were obliged by law and by their duty to the city, its commerce, and to the owner or charterers of all vessels arriving at the port of New Orleans and making use of the wharves or levees on its river front, to accept the last of said proposals; that said city
408 council did actually refuse to entertain said bid, assigning unlawfully as their reason for so refusing that said proposal was filed after the expiration of the advertised delay. And your petitioner further alleges that both said ordinances, to wit, that of Jan. 19, 1875, that of May 17th, 1881, are absolutely null and void; that they undertake to impose, under the guise and name of wharfage dues, a tax or duty for revenue to be devoted and used in the support of a public police, to pay salaries of city officers, to light the public places of said city, and for other purposes foreign and not germanic to the purpose of wharfage dues; that the right of the city of New Orleans to impose and collect wharfage dues is limited to such reasonable compensation for the use of her wharves and levees as will suffice for the construction of and the keeping of the same in good condition and repair; that the imposition of wharfage dues beyond such reasonable compensation, whether the same be demanded and collected by the city of New Orleans or by person or persons to whom she may form such revenues, is in violation of art. "one," paragraph ten, of the Constitution of the United States, which declares: "No State shall, without the consent of Congress, lay any duty on tonnage." Your petitioner shows that the wharfage charges fixed by said ordinance of January 19th, 1875, & adopted with the very immaterial modification mentioned in the bid or proposal of said Joseph A. Aiken by the city council now as so modified, made the rate of wharfage dues to be demanded and collected by said Aiken one unreasonable, excessive and unjust; that they are at least sixty-six and two-third per cent. more than is necessary for the construction, maintenance and repair of wharves, levees, revetments, bulkheads, and the different constructions requi-
409 site to keep the same in good and complete order and condition; that in respect to steamboats he alleges specially that the charges fixed by said ordinances are in excess of fair, reasonable, and necessary compensation to fully the extent above mentioned, and the laying of the same is in violation of the said provision of the Constitution of the United States. Your petitioner shows he is ready now, and willing at all times, to pay such reasonable wharf charges as the city of New Orleans may reasonably impose or authorize to be collected; that he recognizes the right of said city to collect such reasonable compensation for the use of wharf and levee privileges upon the river front, but he denies the right of the city of New Orleans to impose and collect by herself, or by said Joseph A. Aiken, under the said contract or lease the wharfage dues or charges mentioned therein; that he has an interest in the matter in controversy exceeding ten thousand dollars, exclusive of any costs; that said Aiken has, under said pretended contract and authority, demanded of your petitioner the wharfage dues unlawfully by the ordinances aforesaid imposed upon him as charterer of the steam-

boat "Edward J. Gay" hereinbefore named; that said Aiken has refused to listen to the just representations of your petitioner, but has announced that he will continue to demand and collect the wharfage charges which under said ordinances may be imposed upon petitioner; that to prevent such great and manifest irreparable injury petitioner has no remedy except by writ of injunction, and in his belief said writ is necessary. Wherefore, the annexed bond and affidavit considered, petitioner prays that the writ of injunc-
410 tion issue, directed to and forbidding and restraining said Joseph A. Aiken from demanding, collecting, or attempting to collect from petitioner wharfage charges or dues under or by virtue of the contract between him, said Aiken, and the city of New Orleans, through its mayor, Joseph A. Shakespeare, — be duly cited to answer hereto; that after due proceedings the said ordinances of, respectively, January 19th, 1875, and May 17, 1881, be declared null and void and in violation of the Constitution of the United States; that the said contract between Joseph A. Aiken and the city of New Orleans be also declared null and void, and that said writ of injunction be perpetuated with costs; he prays also for all general relief.

(Signed) CHAS. S. RICE,
Of Counsel.

Personally appeared Thomas P. Leathers, petitioner, who, being duly sworn, deposed and said that all and singular the allegations in the foregoing petition are true.

(Signed) T. P. LEATHERS.

Subscribed and sworn to before me this 12 day of July, A. D. 1881.

(Signed) T. WHARTON COLLINS,
Notary Public.

Order.

Let Joseph A. Aiken and the city of New Orleans show cause, if any they have, why writ of injunction should not issue, as within prayed for, on Saturday the 23d day of July, A. D. 1881.

New Orleans, July 15, 1881.

(Signed) HENRY L. LAZARUS, *Judge.*

A true copy.

(Signed) E. A. LUMINAIS,
Deputy Clerk.

411 *Copy of Judgment Dismissing Rule for Injunction in No. 3877, Civil District Court.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

THURSDAY, *the 4th day of August*, 1881.

Present: The Honorable A. L. Tissot, judge.

T. P. LEATHERS
vs.
JOS. AIKEN & *als.* } No. 3877.

The rule *nisi* herein came on for trial this day—present, Chas. S. Rice, Esq., for plaintiff, and Messrs. W. S. Benedict and Geo. Denegre, for defendants; Chas. F. Buck, Esq., city attorney for the city of New Orleans—when, after hearing counsel and pleadings for the reasons assigned by the court in its written opinion in the case of B. Saloy *vs.* The City of New Orleans, No. 460 of the docket of this court, it is ordered that said rule be dismissed and the writ of injunction prayed for by the plaintiff be denied at his cost.

Extract from the minutes.

[SEAL.]

H. MESSONNIER,
Min. and D'y Clerk.

412 MAYORALTY OF NEW ORLEANS,
CITY HALL, *June* 18, 1879.

No. 6015, administration series.

An ordinance granting to Morgan's Louisiana and Texas Railroad and Steamship Company a ferry landing and grounds for the depots, warehouses, and tracks at the foot of Esplanade and St. Ann streets and from Barracks to Marigny streets.

SEC. 1. Be it ordained by the council of the city of New Orleans, That the Morgan Louisiana and Texas Railroad and Steamship Company be, and they are hereby, authorized and empowered to locate, construct, maintain, and use for the passage of engines and passenger and freight cars, etc., all tracks, curves, and switches necessary for the transaction of the business of the company on the river front of the city within the following limits: Commencing at the upper line of Marigny street and extending up the river front and along the river to the upper line of Barracks street, and running back to Levee or Peters street, and at upper line of Barracks street to connect with the tracks now belonging to said Morgan Company and acquired through Charles Morgan from the Pontchartrain Railroad Company, and also to construct tracks to connect with their depots, warehouses, and other places: Provided, That no tracks in addition to those now in existence shall be laid on the levees between Hospital and Julia streets.

SEC. 2. Be it further ordained, etc., That for the accommodation

of passengers and for the storing of freight, etc., said Mor-
413 gan Company is hereby authorized and empowered to construct, locate, maintain, and use, on the land bounded by the upper line of Marigny street, the river, the lower line of the upper division of Elysian Fields street and Levee street, depots, warehouses, turn-tables, and all buildings and constructions necessary and proper for the transaction of their business, as per plans and specifications to be agreed upon and adopted by the council of the city of New Orleans.

SEC 3. Be it further ordained, etc., That all that portion of the river front between the extension of the upper line of Marigny street and the extension of the upper line of Barracks street, with the use in connection therewith of the land back to Levee or Peters streets, is hereby set apart as a landing for the exclusive use of the ferry-boats and barges owned by said Morgan Company, running as part of and in connection with said railroad, and used for ferries or carrying freight for said railroad, provided no steamships or other seagoing vessels shall land at said wharf without paying wharfage; and said company are authorized to build within said limits, and maintain (provided it can be done at their expense) for their exclusive use under the direction and supervision of the administrators of commerce and improvements and the city surveyor, and as per plans and specifications to be adopted by the council of the city of New Orleans, all wharves, landings, and other constructions necessary and proper to facilitate the safe and convenient landing of their said ferries, etc., and in such manner as will enable them to
414 land and receive their trains of cars; and they are authorized and empowered to use any number of ferry-boats and cross the river, and continue the use of their ferry landing on the right bank of the river, and unite their depots on both sides of the Mississippi river by such vessels and in such manner as may be necessary to make a safe and convenient transit of their cars and freight and passengers: Provided further, That there shall be at no time any willful or unreasonable obstruction of the streets along the front of which their tracks are laid.

SEC. 4. Be it further ordained, etc., That said Morgan Company are hereby authorized and empowered to connect the tracks laid and to be laid by them as aforesaid with those of the New Orleans and Jackson and Mobile railroads, and to connect this new landing with their present landing and the grounds now occupied by them at and near St. Ann street: Provided, That nothing in this section shall be construed as right or permission to increase number of tracks as now limited by section one of this ordinance; and they are authorized to do all things necessary and proper to enable them to use the grants made in this ordinance, and which are necessary to the powers herein granted; that within the limits hereinabove named, from Marigny to Barracks streets, there shall be no restrictions as to the number of sidings and switches to be laid and used by said railroad company; the tracks along the levee to be laid under the supervision and instructions of the city surveyor and administrators of commerce and improvements: And provided

further, That no tracks additional to those now in existence
415 shall be laid on the levee between Hospital and Julia streets.

SEC. 5. Be it further ordained, etc., That if said Morgan Company shall hereafter acquire the ownership of the lots bounded by Marigny, Mandeville, and Levee streets and the river front, then the said company shall have the right to extend their tracks into and in front of said lots in such manner as to connect said property with their landings and their depots and warehouses, and also build depots on said lots: Provided, That nothing in this section shall be construed as giving said company the right to obstruct or close Marigny street.

SEC. 6. Be it further ordained, etc., That the rights herein granted for railroad tracks, curves, and switches, depots and warehouses, and landings and wharves, and which are hereinbefore more specifically named, are granted so long as the same shall be used by said Morgan Company, or by their assigns, vendees, or successors, for railroad purposes, for and not to exceed a term of thirty years, and are granted for the consideration named in this contract: Provided—

1. That the said Morgan Company, their assigns and successors, shall construct, establish, run, and maintain a ferry or ferries to ply between the landings herein granted and their depots on the right bank of the Mississippi river, with the means and appliances for carrying passengers, freight, and loaded and unloaded cars across the river.

2. Provided further, That said Morgan Company bind themselves to build or have built and complete within the time stipu-
416 lated in their charter a railroad extending from Berwick Bay to the Sabine river, to connect at that point with the road now running from the Sabine river to Houston, Texas, there to connect with the Houston and Texas Central railway and other roads running from that point to North and West Texas; otherwise this ordinance to be null and void, and without force or effect.

3. Provided further, That the said Morgan Company obligate themselves, at their own expense, to remove Port market and rebuild the same on such lots—to be purchased by said company, at their expense—as the city shall designate; also, at the expense of the said company, to remove and rebuild the building now occupied by Hope Hook and Ladder Company, No. 3, to be placed on some lot of equal value in the vicinity, to be purchased by the Morgan Company, said buildings to be built in accordance with plans and specifications to be furnished by the city surveyor, and under the supervision and instructions of the administrator of water-works and public buildings.

4. Provided further, That said Morgan Company shall remove and rebuild, at their own expense and at such place as shall be designated by the administrators of commerce and improvements and the city surveyor, the wharf at the foot of Esplanade street, now used as a steamship landing; also, at the expense of said company, the third district ferry wharf, and also any and all other wharves of the use of which the city of New Orleans may be deprived by the laying of tracks or building of depots of said company.

417 5. Provided further, That if an arrangement be made satisfactory to Henry Ellerman, wharf lessee, and said Morgan Company rendering the removal of said wharf unnecessary, then the said Morgan Company shall not be required to remove said wharf, and may retain the use of the same.

6. Provided further, That if the said Morgan Company fail to make an arrangement with said wharf lessee, or legally acquire a right to the use of said wharf, then they shall not use said wharf or interfere with its use until the expiration of the lease of said lessee, which expires in 1881.

7. Provided further, That said Morgan Company bind themselves, their assigns and successors, at their own expense, to maintain in good order the wharves on the river front, the exclusive use of which is hereby granted to said company; they also bind themselves to conform to the grades and limits to be established by the city surveyor and administrators of commerce and improvements in the construction of the railroad, tracks, switches, curves, depots, warehouses, platforms, etc.; also to do whatever is necessary in the laying down of the tracks to prevent the disturbance of drainage or impeding unnecessarily the passage of vehicles or passengers through the streets. And they further bind themselves to repair and keep in repair all streets, crossings, bridges, and thoroughfares in, over, and through which their tracks run, or may run, under this ordinance.

SEC. 7. That the lease and grant of the ferry and landings at and near the foot of St. Ann street, as per ordinance No. 2290,
418 old series, approved July 10, 1855, and ordinance No. 799, new series, approved December 16, 1867, and other ordinances and statutes now held by Morgan's Louisiana and Texas Railroad and Steamship Company, be, and the same are, extended for thirty years from approval of this ordinance.

SEC. 8. Provided that no future administration of the city of New Orleans shall have the right to pass any ordinance or ordinances which shall conflict with this ordinance except that, in case another railroad company connecting this city with Texas shall desire the use of the depot and tracks laid down by the Morgan Company between Barracks and Marigny streets, the city council reserves the right to grant said railroad company, with the consent of the Morgan Company, the privilege to use said depot and tracks, after payment to the Morgan Company of a proportionate share of the expenses of erecting said depot and laying said tracks, the same to be ascertained by two experts, one representing the Morgan Company and one representing the other railroad company, and in case of non-agreement the city to appoint a third party, whose decision shall be final.

SEC. 9. Be it further ordained, etc., That the city surveyor be, and he is hereby, directed to prepare plans at the expense of said company representing the grounds, streets, and landings, etc., the use of which is granted to said Morgan Company by this ordinance, which plans, after approval of city council, shall be deposited in the office

of the city surveyor, and shall be used for the purpose of ac-
419 curately describing the extent of the grant herein made.

SEC. 10. Any material violation of the foregoing provisos shall act as a forfeiture and annulment of all the rights and gran s made under this ordinance, and it shall not be necessary for the city of New Orleans to put said company in default, as per article 1911, civil code.

SEC. 11. Be it further ordained, etc., That this ordinance shall take effect and be binding and operate from the date of its acceptance by the said Morgan Company.

SEC. 12. Be it further ordained, etc., That all ordinances or parts of ordinances in conflict with the provisions of this ordinance be, and the same are hereby, repealed.

Adopted by the council of the city of New Orleans June 17, 1879.

Yeas—Chevalley, Glynn, Houston, Isaacson, Marks, Mealey.

I. W. PATTON, *Mayor.*

A true copy.

ROBT C. WOOD, *Secretar*

Ordinance No. 7351, *Administration Series, Adopted Sept.* 27, 1881.

(No. 7351, administration series.)

MAYORALTY OF NEW ORLEANS,
CITY HALL, *September* 27, 1881.

420 An ordinance repealing ordinance No. 1492, new series, granting certain privileges to Charles Morgan.

Be it ordained by the council of the city of New Orleans, That ordinance No. 1492, new series, granting to Charles Morgan certain privileges on the river front of the city of New Orleans be, and the same is hereby, repealed.

Adopted by the council of the city of New Orleans September 27, 1881.

Yeas—Delamore, Fagan, Fitzpatrick, Guillotte, Mealey, Walshe.

Nays—Huger.

JOS. A. SHAKSPEARE, *Mayor.*

A true copy.

M. McNAMARA, *Secretary.*

Ordinance No. 6938, Administration Series, Adopted March 29, 1881.

(No. 6938, administration series.)

MAYORALTY OF NEW ORLEANS,
CITY HALL, *March* 29, 1881.

An ordinance amendatory of and supplementary to the ordinance No. 6695, administration series, passed November 9, 1880, and ordinance No. 6732, passed December 3, 1880, granting to the New Orleans Pacific Railway Company or its assigns the right to establish its terminus within the city limits, and to construct, maintain, and operate a railroad to and from such terminus,
421 with one extension for passenger purposes and another for freight purposes, into and through certain streets and places in the city of New Orleans; and also with reference to and granting to said New Orleans Pacific Railway Company and its successors and assigns certain leasehold rights, and permission for wharves, warehouses, elevators, and sheds on the space, batture, and bank of the river in front of its property purchased or leased.

Whereas the New Orleans Pacific Railroad Company has purchased the road heretofore constructed under the charter of the New Orleans, Mobile and Texas Railroad Company, on the west bank of the Mississippi river, between Bayou Goula and Westwego, and with a view to maintaining and operating the said road in connection with and as a part of its through line to and from its terminus in New Orleans, designated in section 1 of ordinance No. 6695, administration series, passed on the ninth day of November, 1880; such line to cross the Mississippi river from a point at or near Westwego to a point on the east bank of the river in front of the Upper City Park, late Foucher property; thence to extend by the best and most practicable route to the designated terminus between the New canal, Claiborne canal, and Carrollton avenue:

Now, therefore, for the purpose of securing to the city of New Orleans the advantages that will result from locating and permanently maintaining the terminus of the New Orleans Pacific Railroad Company within the limits of the city of New Orleans, as hereinbefore recited:

422 SECTION 1. Be it ordained by the council and city of New Orleans, That the New Orleans Pacific Railroad Company or its assigns be, and are hereby, authorized and empowed to locate and maintain a railroad, with all necessary tracks, switches, turnouts, sidings, and structures of every kind convenient, useful, and appurtenant to the railroad, from such point on the river front as its crossing from Westwego shall be located at, in the vicinity of the Upper City Park, along the western border of the said City Park, and from thence by the best and most practicable route to its designated terminus east of Carrollton avenue.

SEC. 2. Be it further ordained, etc., That the city of New Orleans hereby agrees to lease unto the New Orleans Pacific Railway Company, its successors and assigns, for the period of ninety-nine years,

and at the price of five hundred dollars per annum, payable annually in advance, all that strip or parcel of ground on the river front of said Upper City Park south of Tchoupitoulas street, or south of an extension of Tchoupitoulas street, in a westwardly direction, and between a prolongation of the east and west boundary lines of said park to the river, with all the batture formed thereon, or which may be formed during the term of said lease, with the right to establish and maintain upon said grounds such ferry facilities, wharves, piers, warehouses, yards, tracks, depots, stations, sheds, elevators, and other structures as shall be necessary and convenient for the transfer of cars, engines, passengers, and freight in the transaction of its business. No vessel shall occupy or lie at such
423 wharves without the consent of said company, its successors or assigns, and all vessels lying at and using said wharves with such consent shall be exempt from the payment of levee or wharf dues to the city of New Orleans; the proceeds of such lease shall be applied by the city to the improvement of said park.

SEC. 3. Be it further ordained, etc., That the said New Orleans Pacific Railway Company, its successors and assigns, shall the right to extend its tracks from the said ground so leased between the Upper City Park and the river front, eastwardly along said river front to connect with the belt road at Louisiana avenue, and to connect at Jackson street with tracks heretofore authorized to be constructed between Jackson and Julia streets by section 3 of ordinance 6695, administration series, adopted November 9, 1880, and by ordinance No. 6732, same series, adopted December 3, 1880, provided that between Louisiana avenue and Jackson street the trains of said company shall be run only between sunset and sunrise on said track, except in case of emergency and necessity beyond the reasonable control of the company.

SEC. 4. Be it further ordained, etc., That the said New Orleans Pacific Railway Company, its successors and assigns, shall have the right, and the same is hereby conferred for the term of its charter, and from and after the expiration of the existing lease of city wharves, to enclose and occupy for its purposes and uses that portion of the levee, batture, and wharf in the city of New Orleans in front of its riparian property, acquired or to be acquired, be-
424 tween Thalia and Terpsichore streets, and to erect and maintain thereon at its own expense such ferry facilities, wharves, piers, warehouses, elevators, yards, tracks, depots, stations, sheds, and other structures as shall be necessary and convenient for the transfer of cars, engines, passengers, and freight, and in the transaction of its business. No vessel shall occupy or lie at such wharves without the consent of the said company or its successors or assigns, or discharge or receive cargo thereat, and all vessels lying at or using said wharves by such consent and on the business of the company shall be exempt from the payment of levee or wharf dues to the city of New Orleans. Said wharves and other structures shall be lighted and policed by said company at its own expense. Any vessel lying at these wharves with the consent of the company, but not on its business, or not for the purpose of discharging or receiv-

ing freight or passengers to or from said company as a carrier, shall be liable to the city for usual wharf or levee dues. Any vessel using said wharf to receive any freight not coming to or going from said company as a carrier shall pay usual wharfage dues to the city. In consideration of the permission herein given the company will build three hundred feet of new wharf at such point between Terpsichore and Jackson street- for the city as the administrator of commerce may indicate, and will pave Pilie street between Thalia and Terpsichore streets, and Terpsichore street between Pilie and Front streets, with square blocks of granite or with blocks of
425 compressed asphalt, and keep the same in good order. The rights conferred by this section shall not be held to interfere with the rights of the city to police any part of the river front.

SEC. 5. Be it further ordained, etc., That the mayor be, and he is hereby, authorized and directed to enter into a proper notarial contract of lease for the purpose of carrying out the provisions of the second section of this ordinance.

SEC. 6. Be it further ordained, etc., That the right of way, franchises, and privileges herein and heretofore granted to the New Orleans Pacific Railway Company are and were granted on condition and in consideration that the said grantees shall permanently establish its terminus within the city limits, and shall maintain said terminus during the existence of the charter of said company, for which period the said franchises, rights of way, grant, and privileges shall last and continue, and should the said railway company at any time hereafter remove its terminus from within the city limits, then this grant shall cease and determine and be without force and effect from the date of such removal, and the further condition that the construction work within the city limits shall be executed under the direction and supervision of the city surveyor, and completed to the satisfaction of the administrator of improvements and the administrator of commerce, and the further condition that said railway company shall construct or control a line [of] road, ready for public use, from a crossing of the Mississippi river
426 to its designated terminus in this city within two years from the promulgation of this ordinance.

Adopted by the council of the city of New Orleans March 29, 1881, the veto of the mayor to the contrary notwithstanding.

Yeas—Fagan, Fitzpatrick, Guillotte, Huger, Walshe.

Nays—Delamore, Mealey.

A true copy.

M. McNAMARA, *Secretary.*

Ordinance No. 7037; *Administration Series, Adopted May* 3, 1881.

(No. 7037, administration series.)

MAYORALTY OF NEW ORLEANS,
CITY HALL, *May* 5, 1881.

An ordinance granting and setting aside wharf room for the Chicago, St. Louis and New Orleans railroad.

SECTION 1. Be it ordained by the council of the city of New Orleans, That all that portion of the wharves of the city extending from the lower line of the New Orleans Pacific railroad grant for wharves down to a point within two hundred and twenty-five feet of the upper line of the present wharf of Louisville and Nashville railroad is hereby set apart for the use of and as a landing place for steamboats, barges, steamships, sailing vessels, and other water craft delivering cargoes to or receiving cargoes from the Chicago,
427 St. Louis and New Orleans Railroad Company: Provided, however, That it is not the intention of this ordinance to give to said railroad company the exclusive right to use said wharves, but only to give it such preference in the use thereof as will facilitate the transaction of the business consigned to and from said railroad company.

SECTION 2. That said wharves hereby set aside shall continue subject to all the rules and regulations of the council pertaining to wharves; and that the harbor-master or wharfinger shall not assign the use thereof to vessels other than those doing business with said railroad company, except when such assignment shall not interfere with the delivery or receipt of cargoes to and from said railroad: And provided further, That any vessel or vessels occupying said wharves and not engaged in discharging cargoes to or receiving cargoes from said railroad company shall, at the request of said railroad company, be required to haul outside to admit any vessel to land at said wharf to discharge or receive cargoes to or from said railroad company.

SECTION 3. That permission is hereby granted to the said Chicago, St. Louis and New Orleans Railroad Company to renew the wharves herein set aside for its use, and from time to time to fill up said wharf for such distance as will leave at least sixty feet of wharf superstructure, and to construct such improvements, betterments, and repairs upon and to the same as may be necessary to render and keep them in all respects suitable and proper for the transaction of the business of said railroad company: Provided, That a plan
428 of such renewals, improvements, and repairs shall be first approved by the city council; the cost of such renewal, improvements, and repairs, to the extent that said cost may represent the cost of renewing, improving, and repairing said wharves according to specifications on file in the city surveyor's office, shall be reimbursed to the said railroad company out of the revenues derived from the wharves herein designated by such party or parties as may be authorized to collect such revenues: Provided, That no vessel or water crafts shall use this landing to receive or discharge cargoes

without paying the usual wharf dues, and that the payments so to be made to said railroad company in reimbursement by the lessees, or such persons as the city may authorize to collect the wharfage, shall only be required to be made at the end of each three months, and shall embrace the entire revenue collected from said wharves until the full amount shall have been refunded to the said railroad company. It is also understood that nothing in this ordinance shall be construed to grant to the said railroad company the right to collect the revenue of said wharves unless authorized by said city to do so, or to interfere with the right of the city to collect the same in such manner as the said city may elect.

SECTION 4. That the said Chicago, St. Louis and New Orleans Railroad Company is hereby authorized to construct and maintain such track or tracks to, along, or upon the said wharves and landing as may be necessary for the convenient and expeditious transaction of the business of said railroad company: Provided, That any track laid upon said wharves shall be laid flush with
429 the planking, so as to offer no impediment in crossing over said track; and the said railroad company may erect a shed or sheds over so much of said wharves or *so* portions filled in hereby set apart for them as may be necessary to protect fruit, coffee, provisions, cotton, and other merchandise liable to damage by exposure to the weather.

SECTION 5. The said railroad company shall have the right to remove from the said wharf or landing, at the expiration of this grant, any shed or buildings they may have erected thereon with the consent of the city council, unless the said city or wharf lessees shall elect to pay for and retain the same upon said wharves or landings at the then valuation of such sheds or buildings, to be determined by appraisement if the parties hereto cannot agree.

SECTION 6. The said railroad company hereby agrees, in consideration of the facilities granted to it by setting aside said wharves and landings for its use, to keep Erato street from Pilie street to said wharf, and Gaiomnie street from Pilie street to said wharf in good order and condition for ingress and egress to and from said wharves and landings set aside to and known as the Chicago, St. Louis and New Orleans Railroad Company wharf during the continuance of this assignment of said wharves and landings to the Chicago, St. Louis and New Orleans Railroad Company.

SECTION 7. That this ordinance shall be in full force and effect from the first day of June, 1881, for a term of ten years.

430 Adopted by the council of the city of New Orleans, May 3, 1881.

Yeas—Delamore, Fagan, Fitzpatrick, Guillotte, Huger, Mealey, Walshe.

JOS. A. SHAKSPEARE, *Mayor.*

A true copy.

M. McNAMARA, *Secretary.*

Ordinance No. 7282, *Administration Series, Adopted Aug.* 18, 1881.

(No. 7282, administration series.)

MAYORALTY OF NEW ORLEANS,
CITY HALL, *August* 18, 1881.

An ordinance granting and setting aside wharf room for New Orleans, Mobile and Texas Railroad Company, as reorganized.

SECTION 1. Be it ordained by the council of the city of New Orleans, That all that portion of the wharves of the city extending from the lower line of the C., St. L. & N. O. R. R. grant for wharves to the present wharf of the N. O., M. & T. R. R., as reorganized, is hereby set apart for the use of and as a landing place for steamboats barges, steamships, sailing vessels, and other water craft delivering cargoes to or receiving cargoes from the N. O., M. & T. R. R. Company, as reorganized: Provided, however, That it is not the intention of this ordinance to give to said railroad company the exclusive right
431 to use said wharves, but only to give it such preference in the use thereof as will facilitate the transaction of the business consigned to and from said railroad company.

SEC. 2. That said wharves hereby set aside shall continue subject to all the rules and regulations of the council pertaining to wharves, and that the harbor-master or wharfinger shall not assign the use thereof to vessels other than those doing business with said railroad company, except when such assignment shall not interfere with the delivery or receipt of cargoes to and from said railroad: And provided further, That any vessel or vessels occupying said wharves and not engaged in discharging cargoes to or receiving cargoes from said railroad company shall, at the request of said railroad company, be required to haul outside to admit any vessel to land at said wharf to discharge or receive cargoes to or from said railroad company.

SEC. 3. That permission is hereby granted to the said New Orleans, Mobile and Texas Railroad Company, as reorganized, to renew the wharves herein set aside for its use and from time to time to fill up said wharf for such distance as will leave at least sixty feet of wharf superstructure and to construct such improvements, betterments, and repairs upon and to the same as may be necessary to render and keep them in all respects suitable and proper for the transaction of the business of said railroad company: Provided, That a plan of such renewals, improvements, and repairs shall be first approved by the city council. The cost of such renewal, improvement, and
432 repairs, to the extent that said cost may represent the cost of renewing, improving, and repairing the said wharves, according to specifications on file in the city surveyor's office, shall be reimbursed to the said railroad company out of the revenues derived from the wharves herein designated by such party or parties as may be authorized to collect such revenues: Provided, That no vessels or water crafts shall use this landing to receive or discharge cargoes without paying the usual wharf dues, and that the payments so to be made to said railroad company in reimbursement by the lessees

or such person as the city may authorize to collect the wharfage shall only be required to be made at the end of each three months and shall embrace the entire revenues collected from said wharves until the full amount shall have been refunded to the said railroad company. It is also understood that nothing in this ordinance shall be construed to grant to the said railroad company the right to collect the revenue of said wharves unless authorized by said city to do so or to interfere with the right of the city to collect the same in such manner as the said city may elect.

SEC. 4. That the said New Orleans, Mobile and Texas Railroad Company, as reorganized, is hereby authorized to construct and maintain such track or tracks to, along, or upon the said wharves and landings as may be necessary for the convenient and expeditious transaction of the business of said railroad company: Provided: That, any track laid upon said wharves shall be laid flush with the planking, so as to offer no impediment in crossing over said track; and the said railroad company may erect a shed or sheds over so much of said wharves or so — portions filled in
433 hereby set apart for them as may be necessary to protect fruit, coffee, provisions, cotton, and other merchandise liable to damage by exposure to the weather.

SEC. 5. The said railroad company shall have the right to remove from the said wharf or landing, at the expiration of this grant, any shed or building they may have erected thereon, with the consent of the city council, unless the said city or wharf lessees shall elect to pay for and retain the same upon said wharves or landings at the then valuation of such sheds or buildings, to be determined by appraisement if the parties hereunto cannot agree.

SEC. 6. Said wharves shall be known as the wharves of the New Orleans, Mobile & Texas Railroad Company, as reorganized, and during the continuance of this assignment of said wharves and landings to the New Orleans, Mobile & Texas Railroad, as reorganized.

SEC. 7. That the Louisville and Nashville railroad shall keep Calliope street from the centre of Water street to the wharf and the entire front or levee room granted to them in good order and condition, except such portion or portions of the same as may hereafter be occupied or used by the Chicago, St. Louis and New Orleans Railroad Company, which will be required to be kept in like good order and condition by the said Chicago, St. Louis and New Orleans Railroad Company. The said Louisville and Nashville Railroad Company shall also cover the said front or levee room with such hard substances as may be designated by the city surveyor, similar to that used in covering other portions of the levee. They
434 are also hereby required to take up the wood-work of their old track on the "cotton levee," between Canal and Girod streets, and fill the same with shell, gravel, or ballast, and shall also be required to fill up the batture at the "barge landing" to the grade of their track.

SEC. 8. That it is further understood that nothing herein contained shall affect the right of the Chicago, St. Louis and New Or-

leans Railroad Company to lay their tracks upon the wharf as per plans and specifications adopted by the city council.

SEC. 9. That this ordinance shall be in full force and effect from and after its promulgation, and be and remain in force for a term of years.

Adopted by the council of the city of New Orleans August 18, 1881.

Yeas—Delamore, Fagan, Fitzpatrick, Huger, Mealey.

JOS. A. SHAKSPEARE, *Mayor.*

A true copy.

N. McNAMARA, *Secretary.*

Ordinance No. 799, New Series, Approved Dec. 16, 1867.

No. 799, new series.

Whereas by an act of the Legislature approved April 30th, 1853, the city of New Orleans was required to grant to the New
435 Orleans, Opelousas and Great Western Railroad Company one or more landings within the corporate limits of the city for the accommodation of said company for ferries; and

Whereas by an act passed before T. E. Theard, notary public, in the month of July, 1855, the city granted to the N. O., O. and G. W. R. R. Co. a ferry landing for twenty-five years, one hundred and fifty feet front on the Mississippi river at the foot of St. Ann street, in the second district, conditional that a ferry-boat should make trips every twenty minutes to a point on the opposite side of the river; and

Whereas the city of New Orleans in April, 1858, set apart for the use of said company one hundred and fifty feet river front between Toulouse and Jefferson streets for freight and ferry purposes, which was used by said company for that purpose until the road was taken for war purposes in 1862; and

Whereas that, on the restoration of the road by the military authorities to the company in February, 1866, a space occupied near Canal street was turned over to the company, the city authorities notified the company to vacate the landing used by the military authority near Canal street, — in the meantime the space set apart by the city in April, 1858, between Toulouse and Jefferson streets was improved by the city building a continuous line of steamship wharves, rendering the place unfit for ferry and freight for said company, consequently the road has been restricted to the privilege held under the grant of 1855 at [St.] Ann street; and

Whereas since direct communication has been opened be-
436 tween New Orleans and Galveston by the N. O., O. and G. W. R. R. Co. to Brashear City, passengers and freight taken, the Morgan line of steamships, adopted expressly for the trade, making four regular trips a week with the increased business of trade and freight on said road, the space set apart at St. Ann street is far inadequate for the business of said road; and as the city of New Orleans has a large interest in said road to the extent of one million and a half of dollars, the commercial interest of the city, the interest

of the road, require that a sufficient space should be provided by the city for said company for the safe and convenient transaction of its business—

Therefore be it resolved, that one hundred and twenty-five feet on the Mississippi river, commencing on the lower side of the ferry landing at St. Ann street, extending down with the landing, be, and the same is hereby, set apart and appropriated for the use of the New Orleans, Opelousas and Great Western Railroad Company for freight and ferry purposes, the said company to make and construct all improvements and keep the same in repair at their own expense.

Resolved further, That all privileges, ordinances or parts of ordinances in conflict with the foregoing be, and the same are hereby, repealed.

(Signed) F. W. PERKINS,
President pro. tem. Board of Assistant Aldermen.

(Signed) JAS. GRAHAM,
President Board of Aldermen.

Approved December 16th, 1867.

(Signed) E. HEATH, *Mayor.*

437 *Certificate.*

A true copy of ordinance No. 799, new series, adopted by the council of the city of New Orleans December 16th, 1867, and duly promulgated.

(Signed) M. McNAMARA, [SEAL.]
Sec'y City Council.

Ordinance No. 899, New Series, Approved May 2, 1868.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *May 4th*, 1886.

No. 899, new series.

Be it resolved, 1. That in consideration of the establishment in the city of New Orleans of grain elevators, warehouses, and appurtenances on the part of and at the expense of the "New Orleans Elevator and Warehouse Company," said works to be commenced within sixty days and to be completed within one year after the promulgation of this ordinance, the city of New Orleans does hereby grant to the said "New Orleans Elevator and Warehouse Company" the privilege of building a wharf equal to any now existing in the city; said wharf to be built at a point on the river bank opposite the square of ground bounded by Pleasant, Harmony, Tchoupitoulas, and Levee streets, to occupy two hundred and seventy-five (275) feet of the river bank, and to be built into the river to a sufficient
438 distance so as to be in twenty feet of water at low water; and said wharf to be built and kept in repair at the expense of said company and under the supervision of the city surveyor.

2. That all steamboats or vessels consigned to the "New Orleans Elevator and Warehouse Company" and landing at their wharf for the purpose of discharging or receiving grain shall be exempted from wharf and levee dues while at said wharf.

3. That the city of New Orleans does further grant to the "New Orleans Elevator and Warehouse Company" the privilege, of constructing and working conveyors from their elevators across and over the sidewalks and street to their wharf, said conveyors to be constructed at least twenty feet above the level of the street.

4. That the city of New Orleans does grant these privileges before named to the "New Orleans Elevator and Warehouse Company" for the term of fifteen years, and at the expiration of this privilege said wharf to revert to the city at a valuation to be fixed by two disinterested parties, one to be appointed by the city and the other by the company, and in the event of a disagreement as to said valuation between said parties an umpire shall be appointed by one of the district courts of New Orleans, the decision thereby had to be final.

5. That all ordinances or parts of ordinances in conflict herewith be, and same are hereby, repealed.

(Signed) WM. T. HEPP,
President Board of Assistant Aldermen.

(Signed) JAS. GRAHAM,
President Board of Aldermen.

439 Approved May 2, 1868.

(Signed) E. HEATH, *Mayor.*
D. K. WHITAKER, *Sec'y.*

A true copy of ordinance No. 899, new series, adopted by the council of the city of New Orleans May 2nd, 1868.

[SEAL.] (Signed) M. McNAMARA,
Sec'y City Council.

Ordinance No. 7079, *Administration Series, Adopted May* 17, 1881.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *May* 17, 1881.

(No. 7097, administration series.)

An ordinance providing for the building and repairing of wharves and levees of the city of New Orleans and for farming the revenues thereof.

SECTION 1. Be it ordained by the council of the city of New Orleans, That the administrator of commerce shall, after the enactment of this ordinance, and after having given ten days' notice in the official journal that he will receive at his office sealed proposals for their sale, *shall* adjudicate, as provided for in section 26 and in accordance with the stipulation hereinafter contained, the rev-
440 enues of the wharves and levees of the city of New Orleans, collectible at the rates as may be fixed upon all ships, vessels, steamships, steamboats, barges, flat-boats, and other water crafts of any and every description whatsoever, for the term of five years, commencing on the 29th day of May, 1881, and ending with the 28th day of May, 1886, upon the terms and conditions hereinafter set forth.

SEC. 2. That the wharves and levees, the revenues of the same to be sold under this ordinance, shall comprise the wharves already constructed and existing in the first, second, third, and fourth districts of the city of New Orleans from Toledano street to the lower limit of the city, which is the lower line of the United States barracks, excepting therefrom all ferry and nuisance wharves and all wharves granted to the New Orleans Pacific Railway Company, as well as the wharf granted to the New Orleans Elevator Company, until such time as present franchise expires, and excepting generally all such wharves or portions of wharves and of the river bank, the exclusive use of which may now be enjoyed by private individuals or corporations under existing grants or leases, until such time as said grants or leases may expire, after which time said lessee shall take charge of said elevator wharf on same conditions as other wharves.

All United States Government vessels shall be exempt from payment of wharfage dues.

SEC. 3. That the levees shall comprise the levees already existing in the first, second, third, and fourth districts of the city of New
441 Orleans, extending from the river to the line of the street fronting the river—that is to say, in the fourth district from Toledano to Adele streets, Water street, and from Adele street to Felicity road, Peters street; in the first district from Felicity road to the junction of Peters with Water streets, Peters street; from the junction of Peters with Water street to Terpsichore street, Water street; from Terpsichore to Calliope streets, Pilie street; from Calliope to Julia streets, New street; from Julia street to Girod street, Pilie street; from Girod to Poydras streets, Water street, and from Poydras to Canal streets, Delta street; in the second district from Canal to Custom-House streets, the street in front of the railroad depot; Custom-House to St. Louis streets, the street in front of the sugar sheds; from St. Louis to St. Ann streets, Clay street; from St. Ann to Dumaine streets, the street in front of the meat market, and from Dumaine to Barracks streets, the Mobile and Texas railroad tracks, and in the third district from Marigny to Mandeville streets, the street in front of the Marigny stores, and from Mandeville to the lower limits of the city, Peters street.

SEC. 4. That the person or persons to whom shall be adjudicated as herein provided the revenues collectible as may be provided shall accept the wharves, landings, and levees in the condition in which the same may be on the said 29th day of May, 1881, and that the said person or persons so accepting and taking possession of the said wharves, landings, levees, and bulkheads shall repair and always keep the same in good order and condition during the whole term of their contract.

442 SEC. 5. That the repairs of the wharves and bulkheads shall consist in repairing all holes in the flooring of the wharves and bulkheads and inclined planes immediately upon their first appearance; in raising all portions of the wharves which may have sunk or which may sink to a level of the steamboat landing at Common street; in taking out and renewing all caps and stringers, piles,

mooring piles, fender-piles, bulkheads, etc., which may be found rotten or decayed; in building anew all wharves and bulkheads which from general decay may require the same, and to rebuild any and all wharves and bulkheads where the same now exist or which may be constructed during the term of their lease that may be damaged or destroyed in part or in whole from any cause whatsoever, and in extending into the river all wharves and bulkheads which may require extension so as to have at all times a depth of water of twenty-five feet at the water-line of each and every wharf used by ships and steamships, and a depth of water of twelve feet at the water-line of each and every wharf used by steamboats, barges, and flat-boats.

SEC. 6. That in making the repairs to and in building new wharves the piles used shall be either of pine or cypress timber of the best quality, not less than eleven by eleven inches square at one end and nine inches square at the other end, which shall be driven not less than twenty feet into the solid ground at distances of not more than ten feet from centres; the heads of the piles shall be squared according to the levels to be given by the city surveyor, and shall receive
443 and support eleven-inch square caps, which shall be strongly fastened to each of the piles with rag-bolts one inch square by eighteen inches long, these caps to be of the best quality of pine or cypress timber. The stringers shall be at least ten inches square, shall rest at right angles upon the caps at distances of five feet from centres, and shall be strongly fastened at each alternate intersection with the caps with rag-bolts seven-eighths of an inch square by sixteen inches long. These stringers shall be of the best quality of pine or cypress timber. The planks for the flooring shall be of yellow pine of the pest quality, free from sap, twelve inches wide by three inches thick, not less than fifteen feet long; they shall be strongly fastened to each of the stringers with six-inch pressed spikes, two at each end of the plank and one at each intersection with the stringer; the joints between the planks of said flooring not to be more than three-fourths (¾) of an inch in width.

SEC. 7. That each and every wharf used by steamboats, barges, and flat-boats shall have an incline plane or apron not less than thirty (30) feet in width projecting out of the knuckle row of piles of the wharf on the outside of said incline plane and adjoining the last row of piles thereof; a row of fender-piles shall be driven, which shall receive a cap of not less than eleven inches square, laid on a level with the cap of the inner row of piles, and on the top of said outer cap shall rest a fender-cap twelve inches square, which shall be fastened to the two other cap at distances of five (5) feet
444 with screw-bolts of one (1) inch in diameter and of suitable lengths. On the outer edge of said incline plane, at distances of eighty (80) feet apart and independent from the wharf, clusters of piles shall be driven, each cluster to be composed of four piles, which shall be bolted together with eight screw-bolts of one and a quarter inch in diameter and of suitable lengths; that the person to whom shall be adjudicated this contract shall repair and keep in good order and condition during the whole term of contract such inclined planes or aprons as do now exist, and in case there shall be no in-

clined planes as above required at the time of accepting the present contract the person or persons so accepting shall cause said inclined planes to be built at his or their own expense, and shall keep the same in repair as aforesaid during the entire term of his or their contract.

SEC. 8. That at each and every wharf used for ships a row of fender-piles shall be driven adjoining the outer row of piles, which shall be fastened each with the outer row of piles of the wharf with at least two screw-bolts of one and a quarter inch in diameter; that on the front of each of said ship wharves two fender-caps shall be placed, one on a level with the flooring of the wharf and the other at five feet above low-water mark; said fenders shall be twelve (12) inches square and shall be fastened to the piles of the wharf with screwed bolts of one and a quarter inch in diameter. And the person or persons to whom shall be adjudicated the said contract shall repair and keep in good order and condition during the whole term of said contract such fender piles and caps as above re-
445 quired at the time of accepting said contract. The person or persons so accepting shall cause said fender-piles and fender-caps to be driven and placed as above required at his or their own expense, and shall keep the same in repair as aforesaid during the whole term of contract.

SEC. 9. That at each and every wharf used by steamships a row of fender-piles shall be driven adjoining the outer row of piles, which shall be fastened each with the outer row of piles of the wharf with at least two screw-bolts of one and a quarter inch in diameter, each and every alternate pile to be at least eight feet above the flooring of the wharf; that on the front of each of said steamship wharves two fender-caps shall be placed, one on a level with the flooring of the wharf and the other at five feet above low-water mark, said fenders to be twelve inches square and to be fastened to the piles of the wharf with screw-bolts of one and a quarter inch in diameter. And the person or persons to whom shall be adjudicated said contract shall repair and keep in good order and condition during the whole term of contract such fender-piles and fender-caps as do now exist, and in case there shall be no fender piles and caps, as above required, at the time of accepting said contract, the person or persons so accepting shall cause said fender-caps and fender-piles to be placed and driven as above required at his or their own expense, and shall keep the same in repair as aforesaid during the whole term of said contract.

SEC. 10. That at all the wharves mooring piles at least twelve inches square shall be driven, as follows: On the steam-
446 boat, barges and flat-boat wharves single piles along the knuckle row of the inclined planes, at distances of fifty feet from centres; on the steamship and ship wharves and on the levee along the same double piles wherever the city surveyor shall direct; each of the aforesaid mooring piles to be strongly fastened to the piles of the wharves with at least two screw-bolts of one inch in diameter, and those on the levee to be strongly anchored, and all to project at least four feet above the flooring of the wharves and the

top of the levee. And the person or persons to whom shall be adjudicated said contract shall repair and keep in good order and condition, during the whole term of contract, such mooring piles as do now exist, and in case there shall be no mooring piles as above required at the time of accepting said contract, the person or persons accepting shall cause said mooring piles to be driven and placed at his or their own expense, and shall keep the same in repair as aforesaid during the whole term of said contract.

SEC. 11. That the person or persons to whom shall be adjudicated said contract shall be bound to build all additional new wharves that may be necessary, provided he be not required to expend on such new wharves more than twenty-five thousand dollars in any one year, the said new wharves being calculated at the rate of twenty dollars per square and no more. The said person or persons shall be bound under said twenty-five-thousand-dollar clause to begin by the first of July, 1881, to connect all of the wharves of the first and fourth districts, commencing at Calliope street and running
417 upstream until the elevator wharf is reached; and then commencing at the ferry wharf, opposite the meat market, and running down stream to Poland street, should the caving bank of this section be so strengthened as to permit the same; and then to build all new wharves which may be ordered by the council in the fifth, sixth and seventh districts. All ferry and nuisance wharves, and all wharves granted to railroad companies are not included in the connection of said wharves. The term "new wharves," as expressed in this section, shall be construed as meaning new wharves where there are no wharves now existing, and shall not apply to the rebuilding of wharves to replace old ones, nor to the extension of old wharves into the river so as to obtain the depth of water as before specified at the water line of the wharves.

SEC. 12. That the person or persons to whom shall be adjudicated said contract shall be bound to accept the levees in the first, second, third, and fourth districts in whatever condition they may be in on the 29th day of May, 1881; to fill up the same during the first year of the contract, so as to place the outer edge of the same at the level now established to a level of the steamboat landing at Common street; to grade the same from their outer edge to the paving of the street in the rear on a regular declivity; to cover the same with a sufficient thickness of hard substances, such as rock, gravel, or lake and oyster shells; to keep the same always in good order and condition by filling up all holes on their first appearance with hard substances, as above mentioned; to fill up with river sand all
448 parts of the same which may cave in or sink below the grades aforesaid or which may be washed or destroyed by a storm or any other cause whatever, and cover said new filling with hard substances, as above mentioned, and whenever the batture shall form so as to require the levee to be extended on the order of the council to fill up such part or parts of the batture and build such levees as said council may deem necessary.

SEC. 13. That the person or persons to whom shall be adjudicated said contract shall be bound to accept the bulkheads and revetment

on the outside of the levees in the first, second, third, and fourth districts in whatever condition they may be in on the 29th day of May, 1881; to keep the same always in good order and condition during the whole term of said contract; to build all new revetments which may be required in the place of the old ones, which may be destroyed either by decay, by storms, or any cause whatever, with the best quality of one and a half inch yellow pine planks, double thickness, driven at least four feet into the solid ground and well braced into the levee, the whole in the usual and best workmanlike manner; to build during the first two years of his or their contract a piled bulkhead in the third district, from Marigny to Delery streets, in accordance with the plan of the city surveyor, to be seen in his office; the said bulkheads to be built of the best material and in the best workmanlike manner and to be always kept in the best order and condition during the whole term of said contract, and to rebuild the same, whether destroyed by decay, caving of the bank or bed of the river, storms, or otherwise.

449 SEC. 14. That the person or persons to whom shall be adjudicated said contract shall be bound to furnish all the necessary apparatus, and light with the electric light all the levees, landings, and wharves from Toledano street in the fourth district to Congress street in the third district, the lamps or lights to be placed at no greater distance than 250 feet apart, and the height at which the same are to be erected shall be determined on by the city council; said lamps or lights shall be kept lighted each and every night from sunset to sunrise, and the class, quality, make, and power of said light to be designated by the city council. On the expiration of said lease the lessee or city may buy said electric apparatus at a value to be fixed by appraisers, one to be appointed by the city and one by the lessee, and on failure to agree they, the said appraisers, shall appoint an umpire.

SEC. 15. That all the extent of the port from Harmony to Seventh street be, and the same is hereby, appropriated or set apart as a flat-boat landing, and from Seventh street to St. James street be, and the same is hereby, appropriated as a landing for steamships and sailing vessels; that all the extent of the port from St. James to Market street be, and the same is hereby, appropriated as a landing for staves; that all the extent of the port from Market street to the gas-light company's wharf at Race street be, and is hereby, appropriated as a landing for steamships and sailing vessels; that all the extent of the port from the gas-light company's wharf to Robin street be, and the same is hereby, appropriated as a landing for coal-boats; that all the extent of the port from Robin street

450 to the upper line of New Orleans Pacific Railway wharf be, and the same is hereby, set apart and appropriated as a landing for steamships and sailing vessels; that all the extent of the port from the lower line of the said railway wharf to a point one hundred and thirty feet below Calliope street is set apart and appropriated as a landing for steamships and sailing vessels; that all the extent of the port from one hundred and thirty feet below Calliope to St. Joseph streets be, and the same is hereby, appropriated as a

landing for flat-boats; that all the extent of the port from St. Joseph to Girod streets be, and the same is hereby, appropriated as a landing for barges; that all the extent of the port from Girod to St. Louis streets be, and the same is hereby, appropriated as a landing for steamboats; that all the extent of the port from St. Louis street to the Morgan ferry landing at St. Ann street be, and the same is hereby, appropriated as a landing for steamships; that all the extent of the port from the Morgan ferry landing at St. Ann street to St. Philip street be, and the same is hereby, appropriated as a landing for sailing vessels; that all the extent of the port from St. Philip to Ursulines streets be, and the same is hereby, appropriated as a landing for luggers and other small crafts; that all the extent of the port from Ursulines to Barracks streets be, and the same is hereby, appropriated as a landing for steamships and sailing vessels; that all the extent of the port from Marigny to Congress streets be, and the same is hereby, appropriated as a landing for steamships and sailing vessels; that all the extent of the port from
451 Congress street to the United States Barracks be, and the same is hereby, appropriated as a landing for vessels of all descriptions.

SEC. 16. That the bids of applicants under this ordinance shall specify in detail the amount of wharfage or levee rates or dues to be paid by ships and other sailing vessels, steamships, steamboats, flats, barges, rafts, and other crafts, with the time for which the charges are to be made; the price agreed on between the city and the lessee or lessees to be specified in the contract; vessels seeking this port in distress using city wharves shall pay half rates: Provided, That nothing in this section shall be construed so as to conflict with the provisions of section thirteen.

SEC. 17. That all works and repairs to be done under this ordinance shall be done under the supervision of the administrators of commerce and improvements and the city surveyor, and in case of refusal or neglect on the part of the lessee or lessees to make all said works and repairs it shall be the duty of the said administrators of commerce and improvements to have them made forthwith at the expense of said lessee or lessees.

SEC. 18. That all the works and repairs required to be done under this ordinance shall be commenced by the said lessee or lessees after five days' notice thereof has been given by the administrators of commerce and improvements and the city surveyor and prosecuted as rapidly as possible.

SEC. 19. That in case of failure or refusal on the part of the lessee or lessees to commence or finish the works or repairs within the time mentioned in the order or orders of the administrators
452 of commerce and improvements and the city surveyor the city council shall have the right, without further putting in default, to order the said works and repairs to be done under the supervision of the administrators of commerce and improvements and the city surveyor at the expense of the lessee or lessees; and, further, to hold him or them under his or their sureties liable for all damages caused by said default.

SEC. 20. That the city reserves the right to grant to railroad companies the privilege of constructing such improvements and betterments and making such repairs to wharves that may be hereafter assigned to them respectively as in the judgment of the administrators of commerce and improvements and of the city surveyor may be necessary to render such wharves suitable and proper for the transaction of the business of said railroad companies: Provided, That such improvements and repairs shall not cost the lessee or lessees a greater amount than if said wharves were constructed according to the specifications hereinbefore provided for; and the cost thereof when approved by the said administrators shall be refunded to the said railroad companies by the lessee or lessees out of the revenues derived from said wharves, as from time to time they are collected: Provided, That the lessee or lessees shall only be required to make such payments at the end of each quarter until the full amount is reimbursed.

SEC. 21. That the lessee or lessees shall be furnished by the city surveyor with an inventory of all spars, timbers, stage planks, etc., used for mooring vessels and for staging for vessels, and shall give
453 the city surveyor a receipt for the same, and shall at all times keep on hand for the use of vessels a sufficient supply of such materials, and shall return to the city at the expiration of his or their term of contract an inventory of equal amount and value of the same, it being well understood and agreed that the spars, stage planks, etc., required by this section shall be used only on the wharves proper.

SEC. 22. That all the aforesaid wharves, landings, and levees shall continue subject to the police regulations now governing the same and under existing ordinances, and no change shall be made without the consent of both parties.

SEC. 23. That the lessee or lessees and his or their sureties shall *in solido* be responsible for all damages which may be claimed by the city or by any party or parties who may sustain injury or damage in consequence of the neglect of the aforesaid lessee or lessees to comply with the requirements of this ordinance.

SEC. 24. That it is well understood that in case of failure on the part of lessee or lessees to commence or finish the work or any part thereof within the time fixed the city council shall have the right to annul said contract without putting the said contractor or contractors in default as required by article 1905 of the civil code or any other law, and without applying to a court of justice to annul the same, and without indemnity; and it is also well understood that in case the lessee or lessees shall at any time abandon the work, or not finish or complete the same in conformity with his contract, the said lessee or lessees shall forfeit all claims he [or they] may have for any part of the work done by him or them up to the date of his or their abandonment, and that the city shall be there-
454 by released and discharged from any and all liabilities therefor, and it is also well understood that in case the contract be sold the lessee or lessees and his or their sureties shall be held and bound *in solido* to pay unto the city all loss or difference between

the price at which the lessee or lessees originally contracted to perform the work and the price at which it may be adjudicated at a resale or readjudication.

SEC. 25. That it is also well understood that it is not in the power of the city council, or any officer or department of the government of the city of New Orleans, to release the lessee or lessees from a strict compliance with this contract in all its conditions and in all respects.

SEC. 26. That the said lease shall be adjudicated to the person or persons agreeing to charge or receive the lowest rate or rates of wharfage or dues thereof, and to pay annually to the city of New Orleans in equal monthly installments the sum of forty thousand ($40,000) dollars, thirty thousand ($30,000) dollars of which shall be devoted to the payment and maintenance of a harbor police for the protection of commerce, etc., along the river front of the city, and the remaining ten thousand ($10,000) dollars to be set apart and devoted exclusively to the payment of the salaries of wharfingers, contravention clerks, signal officers, and other employees on levees in connection with the department of commerce of said city; and in connection *to* the foregoing to keep the wharves lighted with electric light, as hereinbefore provided.

SEC. 27. That the lease under this ordinance shall reimburse to such private individuals or corporations as may have con-
455 structed wharves at their expense and have not been heretofore reimbursed therefor the present cash value of such wharves, said value to be assessed by the administrators of commerce and improvements and the city surveyor, or shall pay annually to such individuals or corporations a sum equal to interest upon such cash value at the rate of eight (8) per cent. per annum at the option of the lessees.

SEC. 28. That the person or persons to whom said lease shall be awarded shall give his or their obligation or bond, with good and sufficient security, to be approved by the city council, for the sum of $100,000, conditioned for the true and faithful performance on the part of said lessee or lessees of all duties and obligations imposed on him or them by this ordinance.

SEC. 29. No bid shall be entertained unless the bidder, at the time of presenting his sealed proposal, shall deposit with the administrator of finance the sum of $35,000 in currency, or a certified check, under the condition that the same shall be forfeited to the city in case he or they refuse to comply with the terms and conditions of this ordinance and to sign the notarial act. The money so deposited shall be returned when the notarial act shall have been signed and the bond or obligation executed as provided by this ordinance.

SEC. 30. That the person or persons to whom shall be awarded said lease shall not sell, subrogate, transfer, assign, set over, or sublease his or their right, title, or interest in the same to any person whatsoever without the consent of the city council being pre-
456 viously obtained; and any such sale, transfer, assignment, subrogation, or sublease without the consent of the city council shall subject the party so doing to penalties prescribed by this or-

dinance for violation of its provisions, and will authorize the city council, if deemed advisable, to declare the contract forfeited, and hold the party and his sureties liable in damages for violation of said contract.

SEC. 31. That it shall be the duty of the lessee or lessees to submit to the administrator of commerce on the first day of July of each year a sworn statement, substantiated by books and vouchers, setting forth a full account of their receipts and disbursements during the fiscal year ending May 28 next preceding, and such statement shall show separately the receipts from each class of vessels and also from the wharves herein proposed to be leased, and shall also show separately the cost of maintaining and repairing each wharf and the cost of new or additional structures erected or constructed by said lessee or lessees.

SEC. 32. That from the elevator to Girod street there shall be placed one port-privy in every second block or square, and from St. Louis street to the point opposite the United States mint there shall be placed two port-privies in each block or square, and from said point to the lower limits of city one in every second block or square.

SEC. 33. That all existing leases or contracts for the use of specially designated parts of wharves to steamship lines or other transportation companies be extended during the term of this lease unless otherwise ordained by the city council.

457 SEC. 34. That the city council reserves the right to reject any and all bids and to order a resale.

SEC. 35. That all ordinances or parts of ordinances conflicting with this ordinance be, and the same are hereby, repealed.

Adopted by the council of the city of New Orleans May 17, 1881.

Yeas—Delamore, Fagan, Huger, Mealey, Walshe.
Nay—Fitzpatrick.
Absent—Guillotte.

JOS. A. SHAKSPEARE, *Mayor.*

A true copy.

M. McNAMARA, *Secretary.*

Municipal Advertisements.

DEPARTMENT OF COMMERCE,
CITY HALL, NEW ORLEANS, *May* 17, 1881.

Sealed proposals for the sale of the revenues of the wharves and levees of the city of New Orleans according to ordinance No. 7079 for a term of five years, commencing from the 29th day of May, 1881, and ending on the 28th day of May, 1886, will be received at the mayor's parlor up to the 27th instant at 12 o'clock m.; said proposals must be accompanied with a deposit to the amount of $35,000 in accordance with section 29 of said ordinance No. 7079 adopted May 17, 1881.

WM. FAGAN,
Administrator of Commerce.

458 *Contract. City of New Orleans and Henry Ellerman.*

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Be it known that on this twenty-ninth day of the month of June, in the year of our Lord one thousand eight hundred and seventy-five, and the ninety-ninth of the Independence of the United States of America, before me, Gustave Le Gardeur, Jr., a notary public in and for the parish of Orleans and official notary for the city of New Orleans, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the Honorable Charles J. Leeds, mayor of the city of New Orleans, and herein acting in such capacity of mayor, under and by virtue of resolution number 3166, passed by the honorable the city council of New Orleans, approved on the 29th day of June, 1875, and also came and appeared Henry Ellerman, of this city, and the said mayor, Charles J. Leeds, declared in his said capacity of mayor and for and on behalf of the city of New Orleans that by virtue of authority in him vested by said resolution number 3166, administration series, a certified copy of which is hereto annexed for reference, and in confirmation of the sale and adjudication made by the city council at its sitting of the twenty-ninth day of
459 June, eighteen hundred and seventy-five, as will appear by reference to the said resolution No. 3166, A. S., annexed in the margin hereof for reference, the said mayor does by these presents grant, bargain, sell, and confirm unto the said Henry Ellerman, his heirs and assigns, for the full term and space of four years and eleven months, to commence and be computed from the twenty-ninth day of June, 1875, the contract for building and repairing the wharves and levees according to the specifications on file in the office of the administrator of commerce, and for the payment of debts contracted on account of them by transferring the revenues of the same for the said term and space of four years and eleven months, agreeably to the conditions, stipulations, and regulations of ordinance No. 3121, administration series, as amended by resolution No. 3148, administration series; and hereinafter fully recited.

The said Henry Ellerman hereby binds himself, his heirs and assigns, to perform and execute said contract well and faithfully and strictly in accordance with said specifications, to observe and comply with all the conditions and stipulations therein contained, and at all times to abide by [them] himself and hold his heirs and assigns amenable and subject to the terms, penalties, and conditions of said specifications and of this contract, which said specifications are in the words and figures following, to wit:

Specifications for building and repairing the wharves and levees in accordance with ordinance No. 3121, A. S.

SECTION 1: That the repairs of the wharves required to be made under this ordinance shall consist in repairing all holes in
460 the flooring of the wharves and inclined planes immediately upon their first appearance; in raising all portions of the

wharves which have sunk or which may sink below the levels now established in taking out and renewing all caps and stringers, piles, fender-piles, flooring, mooring-posts, etc., which may be found rotten or decayed; in building anew all wharves which from general decay may require the same, and extending into the river all wharves which may require extension, so as to have at all times a depth of water of twenty feet at the water-line of each and every wharf used for the landing and discharge of ships, and a depth of water of ten feet at the water-line of each and every wharf used for the landing and discharge of steamboats.

SEC. 2. That in making the repairs required by section 12 of ordinance No. 3121, A. S., the piles used shall be of lake or river pine timber, as the city surveyor may direct, of the best quality, eleven inches square at one end and nine inches square at the other end, and shall be driven from fifteen to twenty-five feet into solid ground at distances of ten feet from the centers. The heads of the piles shall be squared according to the levels to be given by the city surveyor and shall receive and support eleven inch square caps, which shall be strongly fastened to each of the said piles with rag-bolts one inch square by eighteen inches long.

The caps shall be furnished out of the best quality of lake or river pine timber. The stringers used shall be at least ten inches
461 square, shall rest at right angles upon the caps at distances of five feet from the centers, and shall be strongly fastened at each intersection with a cap with rag-bolts one inch square by sixteen inches long. The stringers shall be furnished out of the best quality of lake or river pine timber. The plank used for the flooring shall be of yellow pine of the best quality, free of sap, twelve inches wide, not less than three inches thick, and not less than fifteen feet long; they shall be strongly nailed to each of the stringers with seven-inch pressed spiked, two at each end of each plank and one at each intersection of the stringers.

SEC. 3. That each and every wharf used for the landing and discharge of steamboats shall have an inclined plane projecting from the foot thereof of at least thirty feet in width; that on the outside of said inclined plane and adjoining the last row of piles thereof there shall be driven a row of piles which shall receive a cap eleven inches square with nine-inch tenons and mortises, and on the top of said cap shall rest a fender-cap twelve inches square, which shall be fastened to the two other caps at a distance of five feet with screw-bolts of one inch diameter and of suitable length; and that each and any person who shall accept and take possession of said wharves in accordance with this ordinance shall repair and keep in good order and condition during the whole term of contract such inclined planes aforesaid as do now exist connected with the wharves so accepted and taken possession of, and in case there shall be no inclined planes as above required at the time of accepting and taking possession of said wharf or wharves as aforesaid then each and every person so accepting and taking possession of the same shall
463 cause said inclined plane to be built at his or their expense, and shall keep the same in repair as aforesaid during the entire term of contract.

SEC. 4. That at each and every wharf used for the landing and discharge of ships a row of fender-piles shall be driven, the piles to be ten feet apart and fastened, in such a manner as the city surveyor may direct, to the piles of the wharves with at least two screw-bolts of one and a half inch in diameter; that on the front of said wharves two fender-caps shall be placed, one on a level with the flooring of the wharf and the other at five feet above low-water mark; said fenders shall be twelve inches square and to be fastened to the piles of the wharf with screw-bolts one and a half inch in diameter; and that any person who shall accept and take possession of said wharves in accordance with this ordinance shall repair and keep in good order and condition during the whole term of contract such fender-piles and fender-caps as do now exist connected with the wharf or wharves so accepted and taken possession of; and in case there shall be no fender-caps, as above required, at the time of accepting and taking possession of said wharf or wharves as aforesaid, then that each and every person so accepting and taking possession of the same shall cause said fender-piles and fender-caps to be driven and placed, as above required, at his or their cost, and shall keep the same in repairs during the said term of contract.

SEC. 5. That at each and every wharf used for the landing and discharge of steamships fenders shall be driven at equal distances of twenty feet, and each fender shall be composed of four piles
463 eleven inches square strongly fastened together and to the wharves with at least six screw-bolts of one and a half inch in diameter, and the four outside rows of piles of each and every wharf used for the landing and discharge of steamships and of ships shall be braced every ten feet with ten-by-ten-inch braces, which shall be fastened to each of said piles with screw-bolts of one inch in diameter; and that any person who shall accept and take possession of said wharves in accordance with this ordinance shall repair and keep in good order and condition during the whole term of contract such fenders and braces as do now exist connected with the wharves so accepted and taken posssession of, and, in case there shall be no fenders or braces, as above required, at the time of accepting and taking possession of the same, shall cause said fenders to be driven and said braces to be made at his own cost, and shall keep the same in good repair during the whole term of contract.

SEC. 6. That all the wharves which shall be accepted and taken possession of in accordance with this ordinance — mooring piles twelve inches square, [which] shall be driven as follows, to wit: On the steamboat wharves, single piles along the inclined planes at distances of forty feet from the centers; on the steamship and ship wharves, double piles, wheresoever the city surveyor shall direct; that each of the aforesaid mooring piles shall be strongly fastened, as the city surveyor may direct, to the piles of the wharves with at least two screw-bolts of one inch in diameter, and shall project three and a half feet above the flooring of the wharves, and that any person who shall accept and take possession of
464 said wharves in accordance with this ordinance shall repair and keep in good order and condition during the whole term

of the contract such mooring piles as do now exist connected with the wharves so accepted and taken possession of; and in case there shall be no mooring piles, as above required, at the time of accepting and taking possession of said wharves as aforesaid, then that any person so accepting and taking possession of the same shall cause said mooring piles to be driven and fastened at his own cost, and shall keep the same in good repair during the whole term of contract.

T. S. HARDEE,
City Surveyor.

It is well understood that in case of failure by the contractor to begin or finish the work, or any part of the same, within the term fixed the city council shall have the right to annul the contract without putting the contractor in default, as required by article 1905 of the civil code, or any other law or laws, and without applying to a court of justice to annul the same and without indemnity; and it is also well understood that in case the contractor shall at any time abandon the work, or not finish and complete the same in conformity with his contract, the said contractor shall forfeit all claims he may have for any part of the work done by him up to the date of his abandonment, and that the city shall be thereby discharged and released from any and all liabilities therefor; and it is also well understood that in case the contract be resold the contractor and
465 his securities shall be held and bound *in solido* to pay unto the city all loss or difference between the price at which the contractor originally contracted to perform the work and the price at which it may be adjudicated at a resale or readjudication.

It is also well understood that it is not in the power of the city council, or any officer or department of the government of the city of New Orleans, to release the contractor from a strict compliance with this contract in all of its conditions and in all respects.

And in consideration of the foregoing, and the faithful compliance by the said Henry Ellerman with the terms and stipulations of said specifications and of this contract, the said Mayor Leeds declared that he does by these presents, for and in the name of the city of New Orleans, grant, bargain, confirm, transfer, assign, and abandon for the said term and space of four years and eleven months, to commence and be computed from the said twenty-ninth day of June, 1875, unto the said Henry Ellerman, accepting for himself, his heirs and assigns, the rights and privilege of collecting and receiving the revenues of the said wharves and levees.

This transfer is made and accepted under the terms, conditions, stipulations, regulations, and penalties of said ordinance No. 3121, administration series, as amended by said resolution No. 3148, administration series.

And the said Henry Ellerman hereby promises and binds and obligates himself to abide by, conform to, and comply with all and
466 singular the conditions, clauses, terms, regulations, and penalties of said ordinance No. 3121, administration series, as amended by said resolution No. 3148, administration series,

which said ordinance No. 3121, administration series, amended as aforesaid, is in the words and figures following, to wit:

No. 3121, Administration Series, as Amended by Ordinance No. 3148, A. S., Adopted by the City Council June 15, 1875.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *May* 19, 1875.

No. 3121, administration series, as amended by No. 3148, administration series.

An ordinance to provide for building and repairing the wharves and levees and for the payment of debts contracted on account of them by transferring the revenues of the same for a limited time.

SECTION 1. Be it ordained, etc., That the administrator of commerce shall, after the enactment of this ordinance and after having given twenty days' notice in the official journal that he will receive at his office sealed proposals for their sale, *shall* adjudicate in accordance with stipulations herein contained the revenues of the wharves and levees of the city of New Orleans, collectible under existing ordinances upon all ships, vessels, steamboats, flat-boats, and water craft of any and every description whatsoever, upon the terms and conditions hereinafter set forth.

SEC. 2. The purchasers shall assume all the wharf liabilities of the city, according to the ordinances relating thereto, and shall specially provide for interest on the outstanding wharf bonds
467 when due, and shall further specially assume and liquidate the amount of said bonds—amounting to $682,000—in equal monthly installments, and as evidence of their compliance shall deliver to the department of finance the said above bonds and coupons at the respective periods as above for cancellation; also the further sum of $80,000, payable in sixty equal monthly installments, commencing to run from and after the eighth day of May, 1875, due by the city under compromise with the owners of various steamboats made in conformity with ordinance No. 3100, administration series, promulgated in the official journal of the fourth day of May, 1875: Provided, That the whole indebtedness herein designated shall be liquidated within the term of the lease; also the amount of $2,500 monthly to cover expenses of police, lights, and salaries of officers and employees of the city engaged in connection with the wharves and levees.

SEC. 3. The time for receiving said proposals shall expire at the hour of twelve o'clock on the day of the sale, and the said administrator of commerce, in the presence of the mayor and administrator of finance, or in case of the absence of the mayor in the presence of two other administrators, shall proceed to open the sealed bids and ascertain the result of the said proposals.

SEC. 4. The sale shall be awarded to the bidder who shall assume to pay and discharge the obligations and liabilities above set forth in consideration of the transfer to him of the revenues of wharves and levees as above mentioned in the shortest time. The city

council reserves the right to reject the said bid, or any or all the bids, and to readvertise and resell, if deemed advisable.
468 The city council must either accept or reject within five days after the result of the bidding shall have been ascertained. If a bid is accepted the mayor shall enter into a notarial contract with the bidder, according to the provisions of this ordinance. The said bidder, when notified by the city notary, shall appear before him to sign the act and complete the contract within three days after said notice.

SEC. 5. No bid shall be entertained unless the bidder, at the time of presenting his sealed proposal, shall deposit with the administrator of finance the sum of $40,000 in money or $80,000 in city bonds, under the condition that the same shall be forfeited to the city in case he neglects or refuses to comply with the terms and conditions of this ordinance when called on so to do, as is herein provided. The money or bonds so deposited will be returned when the notarial act shall have been signed and the bond or obligation executed as provided by section nine of this ordinance.

SEC. 6. That the person to whom shall be transferred as aforesaid the revenues collectible for the wharves and levees shall be subrogated to all the rights and privileges of the city of New Orleans to sue for and collect said revenues.

SEC. 7. That the person to whom shall be transferred the revenues, collectible as aforesaid, shall not sell, transfer, assign, set over, subrogate, or sublease his right, title, or interest in the same to any person whatever without the consent of the city council previously obtained, and any such sale, transfer, assignment, subroga-
469 tion, or sublease without the consent of the city council shall subject the party so doing to the penalties prescribed by this ordinance for violation of its provisions, and will authorize the city council, if deemed advisable, to declare the contract forfeited, and hold the party and his sureties liable in damages and penalties for the violation of the contract.

SEC. 8. That by this ordinance and the contract specified it is understood and agreed the city only undertakes to transfer such rights as she possesses, and the purchaser takes the said revenues subject to all the rights now held by other persons by way of lease, privilege, contract, or by law, and that the purchaser shall, in reference to them, be subrogated only to the rights of the city.

Also that the ferries and nuisance wharves now existing shall not be interrupted by the purchaser under this ordinance, and that the city reserves the right to increase the number and to change the location of said wharves.

SEC. 9. That the person to whom shall be transferred the revenues, collectible as aforesaid, shall give his obligation or bond, with good and sufficient security, to be approved by the city council, for the sum of $250,000, conditioned for the true and faithful performance and fulfillment on the part of the said transferee of all duties and obligations imposed on him by this ordinance.

SEC. 10. That if a person to whom shall be transferred, as abovementioned, the revenues of the wharves and levees under this ordi-

nance shall fail to comply with any and all obligations as-
470 sumed by him as to the punctual payment of the debts and obligations assumed by him, and the performance of the duties imposed on him, the city council shall have the right to declare the contract at an end, and to sue the party and his sureties for all damages caused by his default or to resell his rights, after not less than ten days' advertisement in the official newspaper, and hold the said defaulting party and his sureties liable for the difference in price, and for other damages sustained.

SEC. 11. That the person to whom shall be transferred the revenues, collectible as aforesaid, shall accept and take possession of the wharves, landings, and levees contained within the limits hereinafter specified; that said wharves, landings, and levees shall be accepted in the condition in which the same may be on the day the notarial act shall be accepted, and that said persons so accepting and taking possession of said wharves, landings, and levees shall repair the same and keep the same in good order and condition during the whole term stipulated in the said notarial contract. It is understood and agreed that the repairs called for by this section shall be commenced within fifteen days after signing the notarial contract, and shall be continued until all are completed.

SEC. 12. That the levees named in this ordinance shall extend back to the line of the street or road, if there be such, along the front of the river, and that the repairs of the levees required to be made under this ordinance shall consist in grading the same according to the grades already established, in covering the same with hard substances, such as rock, lake or oyster shells, or gravel,
471 and keeping the same always in good order by filling up all holes on their first appearance with hard substances, as above mentioned; in filling up with river sand all parts of the same which may cave in or sink below the grades aforesaid, and in keeping the bulkheads on the outside of the same always in good order and condition; and whenever the batture shall form so as to require the levee to be extended the transferee shall, on the order of the city council, fill up such parts of the batture and build such levees as said city council may deem necessary, as well as all new bulkheads, provided the transferee shall not be required to take charge of the levees except in the first, second, third, and fourth districts of this city; but said transferee shall not be entitled to receive any revenue from vessels landing in the other districts until after wharves shall have been built and the transferee shall have complied with the requirements of this ordinance in relation to them.

SEC. 13. That the transferee of the revenues of wharves and levees under this ordinance shall be bound to build all additional new wharves that may be necessary, provided he be not required to expend on such new wharves in any one year more than $25,000: And provided further, That the present distribution of the wharves and levees as assigned for the landing of the different kinds of vessels shall not be changed during the term of transfer without the consent of the said transferee: Provided further, That this obligation in relation to building new wharves shall only extend to the

first, second, third, and fourth districts of the city. The term
472 new wharves, as expressed in this section, shall be construed to mean new wharves where there are no wharves now existing, and shall not apply to the rebuilding of wharves to replace old ones. If the new wharves be required by the city council in the other districts, at their own request or that of any other person, the party so desiring the said new wharf shall be bound to pay the transferee the expense of building said wharves twenty per cent. in advance and the balance on completion of the wharf, according to the rate per square of one hundred superficial square feet which may be contained in the sealed proposals accepted. The transferee shall be bound to build said wharves, and the said party so desiring to have the new wharves built shall receive the revenues derived from such new wharves during the term of contract with said transferee, unless he be sooner reimbursed the amount expended. To give effect to this provision, every bidder shall be required to state the price per square for which he will build new wharves in the said district, and the lowest price will be accepted by the council.

SEC. 14. That all works and repairs to be done under this ordinance shall be done under the supervision of the city surveyor and the administrators of commerce and improvements; and, in case of refusal on the part of said transferee to make all said work and repairs, it shall be the duty of the city surveyor to have them made forthwith at the expense of said transferee.

SEC. 15. That all the works and repairs required to be done under this ordinance shall be done by the parties bound to do the same after five days' notice thereof is given by the city surveyor and the administrators of commerce and improvements.

473 SEC. 16. That in case of the failure of the transferee to commence or finish the work within the time mentioned in the order of the city surveyor and the administrators of commerce and improvements the city council shall have the right, without further putting in default, to order the said works to be done under the supervision of the city surveyor and the administrators of commerce and improvements at the expense of the said transferee, and, futher, to hold him and his sureties liable for all damages caused by said default.

SEC. 17. That the transferee who shall accept and take posession of the aforesaid wharves in accordance with this ordinance shall be furnished by the city surveyor with an inventory of all spars, timber, stage-planks, etc., used for mooring vessels and for staging for vessels, and shall give to the city surveyor a receipt for the same, and shall at all times keep on hand for the use of vessels a sufficient supply of the same, and shall return to the city at the expiration of his term of contract an inventory of equal amount and value of the same. It is is understood and agreed that the spars, stage-planks, etc., required by this section are to be used only on the wharf proper.

SEC. 18. That the transferee who shall accept and take possession of the aforesaid wharves, landings, and levees in accordance with this ordinance and the surety or sureties of such persons shall

in solido be responsible for all damages which may be claimed of the city by any party or parties who may sustain injury or damage in consequence of the neglect of the aforesaid transferee to
474 comply with the requirements of this ordinance.

SEC. 19. That all the aforesaid wharves, landings, and levees shall continue subject to the police regulations now governing the same and under existing ordinances, and no change shall be made without the consent of both parties; that all ships and other water craft shall pay the dues collectible under existing ordinances to the transferee of the revenues.

SEC. 20. That if, from overpowering force, the city shall not be able to protect the transferee in receiving the said revenues, or should they, by any such cause be diminished over one-third, the transferee may, after satisfying all obligations that may have been incurred under the contract up to the time, surrender his contract and be discharged from any further responsibility.

SEC. 21. That the word "person" or "transferee," as used in this ordinance, shall be taken to embrace any firm, company, or corporation who may bid for the contract under this ordinance.

SEC. 22. That specifications for the building and repairing of wharves and levees shall be furnished by the city surveyor.

Adopted by the council of the city of New Orleans May 18, 1875.

Yeas—Bertoli, Brown, Bouny, Landry, McCarthy, Pilsbury.

Nay—Burke.

(Signed) CHARLES J. LEEDS, *Mayor.*

A true copy. J. H. HARDY, *Secretary.*

And the said Henry Ellerman hereby binds and obliigates
475 himself to build all new wharves that shall or may be necessary or required by virtue of said ordinance No. 3121, administration series, at the rate of ten dollars ($10) per square, and in conformity with the aforesaid specifications.

And the said Mayor, Charles J. Leeds, declared that he does moreover, by these presents, subrogate the said Henry Ellerman to all the rights and privileges of the city of New Orleans to sue for and collect said revenues, but in nowise guarantees to the said Henry Ellerman the payment of the wharfage and levee dues, and the collection or the payment thereof is to be enforced by the said Henry Ellerman for his own use and benefit, and at his own cost and expense.

And now personally came and intervened herein John L. Gubernator, Henry H. Stanley, James A. Lusk, and Charles A. Eager, all of this city, who, having read what is above written, declared that they do hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract or lease by the said Henry Ellerman, and his faithful compliance with the terms and conditions of said ordinance No. 3121, administration series, as amended by said resolution No. 3148, administration series, and said Henry Ellerman, as principal, and said Gubernator, Stanley, Lusk, and Eager, as sureties, hereby bind themselves and their heirs, jointly

and *in solido*, in favor of the city of New Orleans in the sum of two hundred and fifty thousand dollars, lawful money of the United States, payable on demand, to the mayor of New Orleans, and to his successors in office.

Now, the conditions of the above-written bond or obliga-
476 tion is such that if the said Henry Ellerman shall well and truly and faithfully perform and execute the present contract or lease in accordance with the said ordinance No. 3121, administration series, amended as aforesaid, then the above-written bond or obligation to be null and void, but otherwise to be and remain in full force and virtue.

The said Gubernator, Stanley, Lusk, and Eager hereby waive the benefit of division and discussion granted by law to sureties.

Thus done and passed, in my office, at New Orleans, the day, month, and year first above written, in the presence of Armand Pitot, Jr., and Ambrose G. La Pice, competent witnesses, domiciliated in this city, who have hereunto signed their names with the said parties and me, the notary, after due reading of the foregoing.

(Original signed) HENRY ELLERMAN.
J. L. GUBERNATOR.
JAMES A. LUSK.
H. H. STANLEY.
E. A. EAGER.
CHAS. J. LEEDS, *Mayor.*
A. PITOT, JR.
A. G. LA PICE.
G. LE GARDEUR, JR.,
Not. Pub.

A true copy of the original on file and of record in my office.
New Orleans, July 9th, 1881.
[SEAL.] G. LE GARDEUR, *Not. Pub.*

(Attached to contract.)

No. 3166, administration series.

Resolved, That the bid of Henry Ellerman for the revenues of the wharves and landings of the city of New Orleans, made in accordance with ordinance No. 3121, A. S., as amended by ordinance No. 3148, A. S., be, and the same is hereby, accepted, and that the mayor be, and is hereby, authorized and instructed to enter into notarial contract with the said Ellerman immediately upon compliance of the said Ellerman with the conditions of the ordinance.

Adopted by the council of the city of New Orleans June 29th, 1875.
Yeas—Brown, Bouny, Landry, McCarthy, Pilsbury—5.
477 Nays—Bertoli, Burke—2.
(Signed) CHARLES J. LEEDS, *Mayor.*

A true copy of the ordinance annexed to the original.
New Orleans, July 9th, 1881.
[SEAL.] (Signed) G. LE GARDEUR, *Not. Pub.*

Extension of Contract for the Wharves and Levees. City of New Orleans and Henry Ellerman.

UNITED STATES OF AMERICA.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Be it known that on this twenty-first day of the month of August in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States of America the 101st, before me, Gustave Le Gardeur, Jr., a notary public, duly commissioned and sworn, in and for the parish and city aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the Honorable Charles J. Leeds, mayor of the city of New Orleans, herein acting as such under and by virtue of ordinance No. 3607, administration series, adopted by the council of the city of New Orleans on the 18th day of August, 1876; and also came and appeared Henry Ellerman, Esquire, of this city; and the said mayor, Chas. J. Leeds, de-
478 clared that whereas the said H'y Ellerman, the lessee of the revenues of the wharves of this city under and by virtue of an act passed before the undersigned notary on the 29th day of June, 1875, has addressed a certain communication to the council of the city of New Orleans, which said communication is in the words and figures following, to wit:

"To the honorable the mayor and administrators of the common council of the city of New Orleans:

"GENTLEMEN: As lessee of the wharves, I make the following propositions for the solution of the present embarrassment and difficulties attending the lease of the wharves:

"1st. I am to pay the wharf bonds and interest at the rate of seventy-five cents on the dollar, upon the condition — the city extends the lease one year and remits one-half of the claim of twenty-five hundred dollars per month for police, lights, &c., from and after the 1st January, 1879, so that after that period the monthly payment shall be only twelve hundred and fifty dollars; the said sum shall not be paid during the year of the extension of the lease.

"2nd. I will pay the above amount on the bonds commencing to run from and after the 1st of January, 1877, to be distributed *pro rata* through the time for which the extension of the lease is granted.

"3rd. The interest at the rate of seven $\frac{3}{10}$ per cent. on the seventy-five cents per dollar of the coupons shall be paid as follows:
479 "The interest falling due on the 1st of December next shall be paid at maturity; that which fell due on the 1st of June last shall be paid on the 1st of March next, 1877; the remaining interest shall be paid as it falls due.

"4th. The city shall by appropriate ordinance approve and ratify the above arrangement."

And whereas the above propositions are acceptable to the holders of the wharf bonds and coupons of interest;

And whereas it is considered that public interest will be subserved by the acceptance of them on the part of the city:

Now, therefore, by virtue of the foregoing, the said mayor, Charles J. Leeds, by virtue of the authority in him vested by said ordinance No. 3607, administration series, a certified copy whereof is hereto annexed for reference, and for and in the name of the city of New Orleans, and the said Henry Ellerman declared that they have covenanted and agreed, and do by these presents covenant and agree and bind themselves, the one unto the other, as follows, to wit:

1st. The said Mayor Leeds does by these presents, in his said capacity and for and in the name of the city of New Orleans, extend for the full term and space of one year, to commence and be computed from the 29th day of May, 1880, the contract entered into between the city of New Orleans and the said H'y Ellerman for building and repairing the wharves and levees, as per act passed before the undersigned notary on the 29th day of June, 1875, to which special reference is hereto had.

480 2nd. The said Mayor Leeds does moreover, by these presents, in his said capacity and for and in the name of the city of New Orleans, remit one-half of the claim for twenty-five hundred dollars per month, which, by the aforerecited act of the 29th of June, 1875, before the undersigned notary, the said Henry Ellerman has bound and obliged himself to pay monthly to cover expenses of police, light, and salaries of officers and employees of the city engaged in connection with the wharves and levees, it being well understood and agreed by and between the said contracting parties that the said remission shall take effect from and after the first day of January, 1877, after which said period the monthly payment to be made by the said H'y Ellerman to cover the aforesaid expenses shall be only twelve hundred and fifty dollars, and that the said sum shall not be paid during the year of the extension of the lease.

3rd. And the bondholders having accepted the proposition of the said Henry Ellerman to receive in full payment of their said bonds and interest coupons seventy-five per cent. of the value of the same, as will appear by their written consent hereto annexed for reference, the said H'y Ellerman hereby binds and obligates himself to pay the said bonds, said payments commencing to run from and after the first day of January, 1877, to be distributed *pro rata* through the time for which the extension is herein granted; and the said Ellerman hereby binds himself to pay, at maturity, and also to pay, on the first of March, 1877, the interest which fell due on the first of June last. And the said Henry Ellerman does

481 moreover, by these presents, bind and obligate himself to pay the remaining interest as it falls due. And the said Henry Ellerman does moreover, by these presents, bind and obligate himself, his heirs and assigns, to perform and execute the present contract well and faithfully and strictly in accordance with the provisions of said ordinance No. 3607, administration series, and also to abide by, conform to, and comply with all and singular the terms, clauses, conditions, regulations, and penalties of the aforerecited act

of the 29th of June, 1875, before the undersigned notary, but in so far only as they do not conflict with these presents.

And now to these presents personally came and appeared Messrs. John L. Gubernator [and] Henry A. Eager, all of this city, sureties of the said Henry Ellerman, by the aforerecited act of the 29th of June, 1875, before the undersigned notary, who, after having taken cognizance of the foregoing, which I, the said notary, carefully read to them, declared that they do, by these presents, consent to and approve and ratify the same in all its parts and contents, and that they do moreover, by these presents, guarantee to the city of New Orleans the faithful performance of the foregoing contract by the said Henry Ellerman, and hold themselves, their heirs and assigns, bound jointly and *in solido* in favor of the city of New Orleans, as sureties of the said Ellerman, in the same manner and to the same extent as by the aforerecited act of the 29th of June, 1875, before the undersigned notary; and moreover hold themselves, their heirs and assigns, bound jointly and *in solido* in favor of the city of New Orleans for the faithful performance by the said Henry Ellerman of the original contract as passed before the undersigned notary on the 29th day of June, 1875, but in so far only as the said original contract does not conflict with the terms, conditions, and provisions of the present contract.

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Thus done and passed at my office, in the city of New Orleans, the day, month, and year first above written, in the presence of Armand Pitot, Jr., and Gustave M. Letillier, competent witnesses, who have signed these presents with the said parties and me, notary, after reading the whole.

(Original signed) CHAS. J. LEEDS, *Mayor.*
HENRY ELLERMAN.
JAMES A. LUSK.
J. L. GUBERNATOR.
H. H. STANLEY.
E. A. EAGER.
A. PITOT, JR.
G. M. LETILLIER.
G. LE GARDEUR, JR., *Not. Pub.*

A true copy of the original on file and of record in my office.
New Orleans, July 9th, 1881.
[SEAL.] (Signed) G. LE GARDEUR, JR., *Not. Pub.*

Affidavit of R. B. Matthews.

Personally came and appeared before me, the undersigned authority, R. B. Matthews, of this city, who, being duly sworn, deposes and says that he is one of the local reporters of the New Orleans Picayune, a newspaper printed and published in the city of New Orleans; that he is a stenographer, and was present at the various meetings of the committees of the New Orleans Produce Exchange, Cotton Exchange, and Maritime Association, and others, held for the purpose of discussing and preparing an ordinance, to be presented

of commerce, but thought he was warranted in saying for all the committees present that they would be extremely happy to have Mr. Clark's assistance.

Mr. Clark said, in reply, that he had not the slightest idea that it was the intention of the committees to exclude a representative of the Jackson railroad. He simply desired to ascertain if railroad men would be permitted to be present.

Administrator Fitzpatrick remarked that he had expected the various associations would submit a plan upon which the council could base an ordinance for the government of the wharves. He was disappointed, however. He would request the chairmen of the several committees to frame an ordinance for a five-years' lease of the wharves and present it to the council for action. He would ask them to consider a reduction of one-half on the present wharf charges. He himself favored a 50 per cent. reduction, and would try to have an ordinance framed on that basis.

Mr. Fenner suggested that the chairmen of the committees should decide whether they would frame an ordinance as advised by Mr. Fitzpatrick.

Mr. Wm. C. C. Claiborne thought the ordinance should be
488 drawn up by the city attorney. The best plan, he urged,
was to agree on the reduction in wharfage and base the ordinance on that new schedule. Capt. Joseph A. Aiken was of opinion that the resolution presented by the committee could not well be improved upon. The committees in joint session had agreed to recommend a lease of the wharves, and that the ordinances should be framed by their representatives acting with the administrators and the city attorney. He desired to know if the administrators of commerce and improvements would agree to the proposition. Administrator Fagan said he would meet the gentlemen gladly at any time to act either on the proposed ordinance or frame a new one. Administrator Fitzpatrick said he had no objection to the plan. He thought, however, it would expedite matters for the committees to draft an ordinance which could be acted upon by the council. Capt. Aiken and Mr. Fenner contended that time would be saved by consulting during the preparation of the ordinance. Mr. Clarke stated he had been told it was necessary to act with expedition in the premises, as the existing lease expired on the 29th of May. He knew of no measure of more importance to the commercial community of New Orleans. It was essential the wharfage question should be settled at once. He proposed that the work of preparing an ordinance should be commenced Friday morning at 9 o'clock. The speaker had always believed the wharfage could be reduced at least 50 per cent., and he was glad to hear the administrator of improvements express the same opinion.

Mr. Clarke went on to make some suggestions in regard to what scope the ordinance should take. He would like to have a small
length of wharf for his company, but did not wish to have
489 the exclusive use of it to the detriment of commerce. Referring to the brightening commercial outlook for this city, he urged that it was for the best interest of every class of citizens to

hold out inducements to attract business from all directions. He had read the pending ordinance, and found some excellent points in it, which might be adopted in framing a new one. Mr. Fagan suggested that the committee, being composed of business men, should meet in the evening and organize. Mr. Clarke said he would be on hand at 5 o'clock in the morning if necessary. The mayor thought there was sufficient time to do the work without making undue haste. Mr. Fitzpatrick advised that the committee under the resolution of Mr Fenner should assemble immediately after the adjournment of the general meeting, organize and appoint a time for commencing their task. Mr. Fitzpatrick desired it to be stated as the sense of the meeting that the committee (hereafter mentioned) would receive suggestions from any citizen of New Orleans in relation to the wharf lease. The meeting then adjourned. The chairmen of the committees representing the various commercial associations then met as a new committee to act under Mr. Fenner's resolution in conjunction with the administrators of commerce and improvements. The names of the members are as follows: Edw. Fenner, Chamber of Commerce; A. J. R. Landauer, Cotton Exchange; Joseph A. Aiken, Steamboatmen's Association; Geo. Horter, Sanitary Association; Samuel Boyd, Cotton Press Association; A. J. Gomila, Produce Exchange; F. M. Hall, Maritime Association; J. C. Clarke, Chicago, St. Louis and N. O. railroad.

490 On motion of Mr. Fitzpatrick, Mr. Edw. Fenner was elected chairman and Mr. M. McNamara was chosen secretary. The committee resolved to meet at 7½ o'clock this evening in the mayor's parlor, and then adjourned.

"*The Daily Picayune*," *Saturday Morning, April 16th*, 1881.

The wharf ordinance, upon which a committee was at work last night. The progress made and the sections adopted.

The committee on wharves appointed at the Thursday night meeting held a session last evening in the mayor's parlor. The following members of the committee were present: Edward Fenner, chairman, Chamber of Commerce; A. J. Gomila, Produce Exchange. A. J. R. Landauer, Cotton Exchange; Captain Jos. A. Aiken, Steamboatmen's Association; George Horter, Sanitary Association; L. Lacombe, Maritime Association; M. J. Zunts, Cotton Press Association; J. C. Clarke, Jackson Railroad Company, and Administrator Fagan. Administrator Fitzpatrick was absent. There were also present Messrs. Eager, James Jackson, D. B. Morey, E. A. Burke, and S. B. McConnico, some of whom did not remain throughout the session, which lasted until after half past ten o'clock. Capt. Aiken suggested that the committee should decide whether they would take up the existing wharf ordinance or the proposed ordinance. While this matter was under consideration Mr. J. C. Clarke said he had drawn up some points which he thought might be incorporated in an ordinance. He read a document which he submitted to the

491 meeting, as follows:

1st. Specifications and plans should be made as a standard

for building new and in reconstructing existing wharves, covering size, kind, and character of timber to be used in the superstructure, distance which piles should be driven in solid ground, and means for the preservation of bulkheads. Wharves should be constructed to sustain a weight of twenty tons per square foot.

2d. Some general provision should be made as to the distance to which wharves should be built out in the river so as to preserve as as far as practicable a uniform wharf frontage.

3d. From time to time the land side of such wharves should be permitted to be filled in in order to decrease the amount of wooden or perishable superstructure necessary to be maintained, thus creating more levee room for handling and depositing traffic, and at the same time reducing the expense of maintaining the wharves.

4th. A provision should be made that the lessees should at all times keep the wharves up to the prescribed standard, so that the wharves at the expiration of the lease shall be in first-class order and efficiency.

5th. Lessees should be required to furnish sworn statements on or before the first day of July in each and every year, verified to the satisfaction of the city council by the exhibit of all books, papers, and vouchers relating to earnings and expenses on said wharves, showing the gross earnings from each wharf of the leased premises and the amount expended on each of said wharves embraced in said lease. The failure of the lessee to do this will invest the council with the power to declare the lease annulled, and the lessee shall have no claim for loss or damage against the city of New Orleans by reason of this annulment of said lease.

492 6th. The administrators of improvements and commerce should appoint an inspecter of wharves and landings, whose entire time should be devoted to a personal examination of wharves, landings, etc., to see that they are kept in good and proper conditions, the salary of such inspector to be paid by the lessees of the wharves; but said inspector shall report to and be responsible to the said administrators, who shall have the power to remove and appoint such inspector at pleasure.

7th. A maximum rate of wharfage per ton should be prescribed by the city council, and a fixed charge for each lugger, coal-boat, flat-boat, or other vessel using the wharves or landings.

8th. The city council shall make such rules and regulations for the government and use of said wharves and landings as may be in their judgment necessary to promote the best interests of the city and afford the greatest convenience for the handling of commerce in the port of New Orleans.

9th. The city council shall, in the event of any unforeseen disaster to said wharves and landings and levees beyond the ordinary casualties to or maintenance thereof (and the city council shall be the judge thereof), be empowered to increase the rates of wharfage or charges for the purpose of producing a sum sufficient to repair and make good such extraordinary casualties to such wharves and landing and levees, and as soon as the sum so raised, by increased rates of wharfage or charges, shall meet such emergency the council shall

reduce the rates of charges to the maximum prevailing at the time of the occurrence of such extraordinary casualty.

493 10th. The administrators of improvements and commerce shall have the power, if they so approve and elect, to direct the lessees to set apart any specific wharf or landing for the use of any transportation company, or for other purposes, upon such transportation company or other parties executing a bond to keep said premises in good order and condition and upon the payment annually to the lessees by such transportation company or other parties, on the approval of the aforesaid administrators, of such sum of money as may be agreed upon to be used in building or repairing wharves or landings in other portions of said port of New Orleans.

11th. Such parties or transportation companies as may have certain wharves or landings allotted to them shall and may be authorized to collect the maximum rate of wharfage established by said city for the purpose only of keeping said wharves and landings in good order and condition and for policing and lighting the same, and for no other purpose.

12th. No exclusive use of any wharf or landing shall be granted to any party or company, but all wharves and landings under the control of said city or lessees shall be opened to the commerce of the port of New Orleans under such rules and regulations as may be from time to time established for the government of said wharves and landings.

13th. Where any wharf or landing has been erected and is maintained by a private party or corporation the revenues collected for use of said wharf or landing shall be paid over to the party or corporation building or maintaining said wharf or landing;

494 or, if said revenues are paid to the lessees of the wharves and landings, such lessees shall keep the said wharf or landing in good order and condition and pay annually to the party or corporation which constructed said wharf or landing 10 per cent. on the cost of said wharf or landing and improvements placed thereon.

14th. The purpose to be served in taxing commerce should be only to procure a sum absolutely necessary to improve and keep in good repair the wharves and landings, and in this way cheapen and facilitate the handling of commerce in the port of New Orleans, and the city administrators hereby declare that it is to the interest of this city to reduce from time to time the charges on commerce in the port of New Orleans to the smallest amount as may be consistent with the object sought to be attained.

Mr. Lacombe moved that the ordinance introduced by Administrator Fagan be taken up and acted upon section by section. He thought that in this way a new ordinance could be drafted. After some discussion this suggestion was adopted, and Secretary McNamara read the ordinance. In section 1st the terms of lease was changed from 10 to 5 years; sec. 2, objection was made to setting aside any wharf space to be used free of charge. Mr. Clarke argued against allowing any free or exclusive wharfage. Mr. Gomila was of opinion that some wharves must be designated for the use of railroads, but not set aside for their exclusive benefit. Mr. Clarke

thought that where particular wharf facilities were given to a railroad the company should pay for the extra advantages, the money to go to the repair of the wharves. Capt. Aiken approved of giving railroads proper terminal facilities, but vessels landing at their wharves should pay the same as at other wharves. Mr. Clarke stated that this was one of the points made in the series of
495 suggestions he had read; he argued that there should be no free wharfage.

All the members of the committee seemed agreed that no free wharfage should be allowed. The only point of difference was as to who should collect the revenues from wharves set apart for railroads, etc.—the railroad companies or the lessee. Mr. Landauer thought such wharves should be included in the general lease. Mr. Clarke said the Jackson Railroad Company had built their wharf and kept it in repair; nevertheless the company paid wharfage. Under the new lease the lessee must take the wharf and reimburse the company, or pay interest on the capital expended by the company in building and keeping up the wharf. Mr. Fagan explained that it was customary for the party constructing the wharf to be reimbursed out of the collections for wharfage. Capt. Aiken contended that if the lessee agreed to pay for the wharf he should be credited with the amount as new work done.

An amendment to section 2d was adopted providing that the wharves sold under the ordinance should include all except the wharf of the New Orleans Pacific railway, the elevator wharf, until the expiration of their franchise, and a wharf for the United States Government. On the advice of Mr. Horter the clause requiring the United States Government to build its wharf was stricken out. On suggestion of Capt. Aiken Government vessels were exempted from wharfage dues. Section 3d, defining the limits of the levees, was read and adopted. Section 4th, requiring the lessee to accept the wharves in the condition he should find them, was adopted. Section 5th, relating to repairs on the wharves, was adopted. Section 6th, containing specifications for building the wharves, was also adopted. Sections 7, 8, 9, 10, and 11 were also adopted with
496 slight amendments relative to the grade of wharves, which was left as at present. In section 12 a clause requiring the lessee to fill up with river sand all parts of the levee which may cave in or sink below the grades gave rise to discussion. Capt. Aiken was opposed to having such work done out of the wharfage revenues.

Mr. Clarke contended that commerce must pay for the advantages afforded to it. The wharf charges were less here than in almost any great seaport in the country. Mr. Clarke offered the following as an amendment:

The city council shall, in the event of any unforeseen disaster to said wharves, landings, or levees beyond the ordinary casualties to or maintenance thereof (and the city council shall be the judge thereof), be empowered to increase the rates of wharfage and charges for the purpose of producing a sum sufficient to repair and make good such extraordinary casualties to such wharves, landings, and

levees, and as soon as the sum so raised, by increased rates of wharfage, is sufficient to reach such emergency the council shall reduce the rates and charges to the maximum prevailing at the time of the occurrence of the emergency.

The speaker urged that taxes should be levied to meet great emergencies. He took occasion to refer to certain features of the commercial prospects of New Orleans, and read a circular issued by the chairman of the Trunk Pool Line committee in New York to Western and Northwestern railways reducing freight on oranges and lemons. This action was caused by the low freights on these fruits from New Orleans to the North and West.

Mr. Clarke wished to see New Orleans the cheapest seaport in the world, but he thought that preparations should be made to meet emergencies of every kind.

Mr. Landauer favored Mr. Clarke's amendment.

497 Capt. Aiken, for the sake of harmony, accepted the amendment, which was added to section 13 of the ordinance as a proviso.

The committee then adjourned until Monday evening at half past 7 o'clock.

Wharves and Landings.

Proceedings of the joint committee last night specifying rates for ocean and river tonnage.

The joint committee on the wharf ordinance met again last night, pursuant to adjournment Friday.

Present: Edw. Fenner, chairman; L. Lacombe, M. J. Zuntz, A. J. R. Landauer, J. A. Aiken, A. J. Gomila, Mr. Clarke, represented by Mr. Morey, and Mr. McConnico and Administrators Fagan and Fitzpatrick.

Among other gentlement present were Mr. Geo. H. Rea, president of the Mississippi Valley Transportation Company; Mr. Jas. Jackson, M. Jas. Lusk, and Capt. John A. Stevenson, of the Mississippi Valley Transportation Company.

Capt. Aiken moved to strike out section 14, requiring the contractor to pave certain portions or approaches to the levee.

Mr. Fitzpatrick asked why he desired this stricken out.

Captain Aiken replied that it was not necessary to have this portion of the levee paved.

498 It was, he said, physically impossible to truck cotton over square blocks. He thought shells would answer better. The section was stricken out.

Section 15, providing for lighting the levee with electric lights, was read.

Mr. Lacombe moved the adoption of the section. It was amended by Capt. Aiken to read that, at the expiration of the lease, the apparatus shall be purchased by the city.

The section was then adopted.

Section 16 sets apart various portions of the levees for the different classes of vessels.

Capt. Aiken moved the striking out of a clause reserving as a landing or terminus for railroads the portion of the levee from Thalia street to Calliope street.

Mr. McConnico said the railroads were not asking a special privilege at this time, only that sufficient space should be reserved to accommodate the railroad companies.

The amendment of Capt. Aiken was adopted, with the clause, as follows, as amended by Mr. McConnico: "That all the extent of the port from the lower line of said railway wharf to a point 130 feet below Calliope street be, and the same is hereby, appropriated, etc., for steamships and sailing vessels." The entire section was adopted.

Section 17 was taken up. It provided that the bids of applicants under this ordinance shall specify in detail the amount of wharfage to be paid by ships, other sailing vessels, steamships, etc.

499 Capt. Aiken proposed a substitute for the section.

The third section of the old lease was read as a part of his amendment, specifying charges of blank cents per ton on steamboats.

Mr. Lacombe said that, as the representative of the Maritime Association, he desired to offer an amendment with regard to ocean tonnage, as follows: A maximum charge of 10c. per ton for 30 days or less, and one-third of said rate for a further extension of 30 days or less; for vessels in ballast loading exclusively with grain the maximum of 5c. per ton may be charged for a period of 30 days or less, and 5c. per ton for the extension of the same number of days or less, and one-third of 10c. per ton for every 30 days or less thereafter.

Mr. George H. Rea, of St. Louis, president of the Mississippi Valley Transportation Company, was at this juncture introduced to the committee, and spoke as follows:

"As one of the largest contributors to the wharfage of this port, and as the committee is considering that question, I desire to make a few remarks if I am in order. (Mr. Fenner said the committee would like to hear the gentleman, who proceeded.) We pay, I think, more wharfage than any corporation or private individual. I wish to say that it is not the amount of the charge we care for, but for the wharfage facilities you can give us here to handle our freight with dispatch.

"The more facilities given the shipping the more they can afford to pay. It has been said that the wharfage in this port is rather excessive; that the charges are more than at other points.

500 My experience has been that the wharfage charges, with the facilities afforded here, are less than in any other port in the United States. There is no other port in the United States that I know of where a vessel of two or three thousand tons can discharge *his* cargo for even double the amount of the wharfage charged here, and yet you are paying from 25 per cent. to 50 per cent. more for labor than elsewhere. At St. Louis our wharfage is light; it is about one-half what it is here; the wharves do not cost so much; but we have to provide appliances of our own, and there is hardly

any corporation whose appliances do not cost from $30,000 to $50,000. Nothing of that kind is necessary here.

"In addition to this expense we have to pay the city $1,500 or $2,000 for our wharf-boat that lies at the levee. Not only that; the property is assessed and we pay taxes on it. In reality we pay there more wharfage than in the city of New Orleans. Some people talk of free wharfage in Boston. Most of the wharves there are owned by private individuals. They notify you to go to their wharves and charge no wharfage, but every package of merchandise passing over the wharves is taxed by the owners of those structures, which amounts to about double what fair wharfage would be."

The speaker reiterated what he had said about the facilities afforded in this port, where more room is given for handling freight than anywhere else. He said further: "Last year we paid from $18,000 to $20,000 wharfage here. I do not believe there is any other port where we could have handled our freight for $30,000 more wharfage."

Concluding, he said: "I do hope, gentlemen, when you make
501 your wharfage rates you will fix them high enough to provide good wharves."

Capt. Aiken said he had purposely omitted reference to a maximum rate for the reason it might possibly prevent any one from bidding for the lease.

Mr. Lacombe stated that the Maritime Association had desired a reduction of the wharfage. Capt. Aiken made the point that the principal repairs were to be made on the wharves of the ocean vessels, and that it should not be expected that the cost of the repairs should be greater than the revenues.

Mr. Gomila was in favor of giving the grain vessels cheap wharfage, but the time for laying at wharves should be reduced, as they might exclude cotton ships.

Mr. Lacombe changed the time allowed for grain vessels to fifteen days instead of thirty.

Mr. Landauer proposed an addendum to Mr. Lacombe's amendment, that vessels in distress using city wharves should pay half wharfage.

Mr. Lacombe's amendment was rejected.

Capt. Aiken's substitute, leaving the charges on ocean and river tonnage blank, was lost.

Mr. Landauer thought some equitable rate should be fixed for all classes of vessels—ocean and river.

Capt. Aiken said nobody would give $175,000 of work for $150,000 of revenue.

A deadlock seemed imminent, when a motion was made to adjourn.

502 Mr. Fagan suggested that there was no time to be lost in preparing the ordinance.

Mr. Lacombe said he had thought the representatives of the ocean and river vessels were in harmony. He had nothing to do with the steamboats, but represented the Maritime Association. He could not withdraw his demand for a reduction.

Finally, the original amendment of Mr. Lacombe was altered and adopted, as follows: On ocean tonnage a maximum charge of 12 cents per ton for thirty days or less, and one third of said rate for further extension of thirty days or less; vessels in ballast loading with grain a maximum of (6) six cents per ton for a period of fifteen days or less, and five cents per ton for an extension of the same number of days or less, and one-third of 12 cents per ton for every 30 days or less thereafter: Provided, That vessels arriving in ballast exclusively shall not be charged for the actual time engaged in discharging, but which time shall not exceed —— days, and that when such vessels load exclusively with grain they shall not be charged more than —— cents per ton, said charges to be recovered before departure; vessels arriving in distress and using the city wharves to be charged half rates.

On motion of Capt. Aiken, sections 3, 4, 5, 6, 7, 8, 9, and 10 of the Eager-Ellerman ordinance were added to section 17 of the pending ordinance, as amended above, to constitute one section.

The following changes were made in the sections: The maximum rate for steamboats shall not be more than six (6) cents per ton if in port not over five days, and five dollars per day after said
503 five days have expired; boats arriving and departing more than once a week half rates.

On flat-boats and barges a reduction of four-tenths was made, this reduction applying to those coming for a single trip or to be broken up, etc.

At the end of section 17 a proviso was added specifying that the above provisions should not conflict with section 13, which provides that the rates may be raised in case of emergency.

Having adopted this section the committee adjourned until Wednesday night, when the consideration of the ordinance will be concluded.

The Daily Picayune, Thursday Morning, April 21.

The wharf ordinance. Last session of the joint committee and the result of their labors.

The committee on the wharf ordinance resumed its labors last night, Mr. Edw. Fenner presiding, and all the members present. Neither of the administrators, Fitzpatrick or Fagan, were on hand at the opening of proceedings. Section 17, to which amendments were made at the last meeting, was read by the secretary.

Mr. Landauer moved the reconsideration of section 17. Carried. He suggested that 60 days be allowed steamships instead of 30, as with a maximum of 12 cents per ton a steamer might pay
504 more than she does now.

Mr. Lacombe moved that the rate be 10 cents per ton for 30 days and one-third of that rate for 30 days or less thereafter for steamers.

Capt. Aiken said he was not an advocate of high wharfage, but he thought it would be better to leave out the maximum until it was determined how much the revenue and expenses would amount to.

The motion was adopted.

Mr. A. K. Miller said he did not think the lessees had ever exacted the 10 cents per ton, as steamers paid on their gross register.

Mr. Lacombe moved that the charges on grain vessels should be six cents for fifteen days and six cents for thirty days thereafter.

Mr. Gomila said the rates on grain vessels should follow those on other classes of shipping. He understood that the wharves on the other side of the river were taking away the revenues of grain vessels. He had no desire to see the revenues cut down by reduction on such shipping. In his opinion the rate on all should be uniform.

He wished it understood that his interests across the river had no weight with him. He represented the Produce Exchange.

Capt. Aiken contended that grain ships should have cheaper wharfage than others, as they were loaded more speedily.

A motion having been made to specify no maximum rates, Mr. Lacombe said the committee had met for the purpose of preparing an ordinance, and not to leave blanks in the wharfage rates.

505 So far as the Maritime Association was concerned, he objected to this way of doing business. He was in favor of fixing the rates.

Capt. Aiken suggested that it would be wiser to specify the work to be done by a lessee, and then determine the rates to cover it. Unless this were done the expenses might be more than the revenues. He proposed to demonstrate this by figures.

Capt. Aiken said as the ordinance stood the expenses would be about as follows:

Annual cost of wharves	$65,000
Extending out wharves 25 feet, etc.	20,000
New wharves	25,000
Repairs	5,000
New revetment and bulkheads	12,000
Batture and bulkheads	15,000
Electric lights	13,000
Miscellaneous	10,000
Policing wharves, wharfingers, etc.	20,000
	$165,000

Capt. Aiken wished to know from Mr. Lacombe what his estimate of the revenue was.

Mr. Lacombe answered that he had made no estimate. It was stated, however, that the wharfage could be cut down 50 per cent., and yet leave a profit for a lessee.

Mr. Lacombe's amendment was adopted so as to fix the rates on vessels loading exclusively with grain at 6 cents per ton for 15 days, 6 cents per ton for succeeding 15 days; for succeeding 35 days one-third of 12 cents on sailing vessels, and one-third of 10 cents

506 on steamers.

Section 18, providing that the work shall be executed under the supervision of the administrators of commerce and improvements and the city surveyor, was passed.

Sections 19 and 20, setting forth how the lessees may be put in default for neglect of duty, were passed.

Mr. McConnico offered an additional section, as follows:

SEC. 21. That the city reserves the right to grant to railroad companies the privilege of constructing such improvements and betterments and of making such repairs to the wharves as may be hereafter assigned to them respectively, as in the judgment of the administrators of commerce and improvements and the city surveyor, may be necessary to render such wharves suitable and proper for the transaction of the business of said railroad companies, and the cost thereof, when approved by the said administrators, shall be refunded to the said railroad companies by the lessee out of the revenues derived from said wharves, as from time to time they are collected: Provided, That the lessee shall be required only to make such payments at the end of each quarter until the full amount is reimbursed: Provided, That such improvements and repairs shall not cost the lessee a greater amount than if said wharves were constructed according to specifications hereinbefore provided for.

The section was adopted, as were the succeeding sections to the 26th.

In section 26 Mr. Lacombe moved to strike out $40,000 for the maintenance of a harbor police, and insert $10,000 for pay-
507 ment of salaries of wharfingers, clerks, etc.

Capt. A. K. Miller approved the amendment. He thought the harbor police recently organized was sufficient.

Capt. Aiken moved that the section stand as it was, with the exception of substituting $20,000 for $40,000 to pay the police. He contended that the shipping enjoyed the benefits of police protection and should pay for it.

Mr. Lacombe argued that the lessees should not be saddled with the expense of policing the wharves. This should be done by the city.

During this discussion Administrator Fagan put in an appearance. He stated that the council would not agree to exclude all appropriation for the police from the ordinance.

A vote on Mr. Lacombe's amendment being taken it was lost. Capt. Aiken's was then adopted.

The following additional section by Mr. McConnico was adopted:

That the lessee under this ordinance shall reimburse to such private individuals or corporations as may have constructed wharves at their expense and have not been heretofore reimbursed therefor the present cash value of such wharves (said value to be assessed by the administrators of commerce and improvements and the city surveyor), or shall pay annually to such individuals or corporations a sum equal in interest upon such cash value at the rate of 8 per cent. per annum at option of the lessee.

Mr. McConnico offered the following additional section, which was adopted:

That it shall be the duty of the lessee or lessees to submit
508 to the administrator of commerce, on the 1st day of July of each year, a sworn statement, substantiated by books or

vouchers, setting forth a full account of their receipts and disbursements during the fiscal year ending May 28th next preceding, and such statement shall show separately the receipts from each class of vessels and also from each of the several wharves here proposed to be leased, and shall also show separately the cost of repairing and maintaining each wharf, and the cost of new or additional structures erected or constructed by said lessee or lessees.

The consideration of all the sections was concluded

Mr. Fenner submitted a communication from Major Howell, of the United States Engineers, relating to the building of wharves.

Mr. Horter urged that the wharves should be closed in on the outer side to prevent people from getting under them. He suggested the building of port-privies along the front of the wharves.

Capt. Aiken made some objections to the suggestion. It would cost a great deal to close in the wharves with bulkheads. With regard to the other portion of the amendment, the steamboatmen would not land their vessels alongside of a privy.

The section was adopted providing for the establishment of privies along the landings, those for steamboats excepted.

The ordinance having been disposed of, Mr. Fenner made the following remarks:

Our labor ended, it only remains for me to thank you, gentlemen, for the high compliment conferred in selecting me to preside over your deliberations. I do not arrogate to myself peculiar fitness for the position in which, through your courtesy, I have
509 been placed. Your selection I attribute alone to the fact that, as chairman of the committee from the Chamber of Commerce, commerce in its broadest sense would be represented through your presiding officer.

It has doubtless occurred to you that this assemblage of representative men from your several commercial bodies, met to deliberate upon a question of great importance to the future welfare of this city, presents a novel and most hopeful omen that our business men are becoming alive to the necessity of more energetic efforts to secure for this city that share of the produce trade of the West to which her geographical position and natural advantages entitle her.

The step you have now taken is one well calculated still further to excite the alarm of Eastern cities.

You must anticipate herculean efforts to flank your measures by the employment of every device which the great energy of the people and the enjoyment of immense pecuniary resources may render effective.

I cannot better explain the thoughts which occur to me than by paraphrasing the remarks of the New York Shipping List: "It is safe to say that unless New Orleans keeps fully abreast of her numerous competitors in the matter of increased and cheaper facilities for handling freight she will be compelled to submit to a still larger diversion of trade that has hitherto been compelled to seek her wharves for export and import by virtue of the advantages which the Mississippi river has long conferred upon her." But, make

down freights as low as possible, reduce all the expenses
510 of the port to the lowest practical point, and New Orleans will be able not only to hold her own against competitors, but take at once and forever her true position in the front rank of commercial cities.

The maximum of power is derivable from unity. This assemblage is an example of that unity. Henceforth we must band together for the common weal. Great events have changed the course of trade. A protracted war has worn smooth and easy new channels of commerce. We must rise superior to narrow views, and by united efforts and sagacious provisions regain our lost ground.

The object of this assembly concerns not only commercial men; the humblest citizen has the deepest interest in your deliberations. The success of this movement means work for the poor man twelve months in the year. The value of property, its ready sale, the employment of capital, are also involved.

The grandest example of the unity I deem so essential is presented in the combined efforts of our citizens to establish, through means never before tried, the permanent good health of this city, the chief stone of the foundation upon which our unlimited prosperity may be raised.

I appeal to the citizens, one and all, to take their place in the ranks with those who are determined to exert whatever of intelligence and enterprise they possess to make the city in reality, as well as in name, the Queen City of the South.

Capt. Aiken called attention to the fact that this was the first time for years that a city council had called citizens in consultation on a public measure. He moved a vote of thanks to Chairman Fenner and Secretary McNamara for their services, which was given, and the committee adjourned *sine die*.

511 *Agreement of Counsel Concerning Plan of L. H. Pilié, Deputy City Surveyor. Filed 1st October*, 1886.

U[nited] States Circuit Court, 5th Cir., East. Dist. of La.

OUACHITA [&] MISS. RIVER PK'T CO.
vs.
MRS. C. A. AIKEN *et als.* } No. 9878.

Whereas the plan of L. H. Pilie, deputy city surveyor, enumerated under No. 15 of the agreement of Feb'y 18th, 1886, as to supplemental transcript in this case as one of the papers to be included in said supplemental transcript, is mislaid, and the attorneys for the defendants are not able to produce it at this date (October 1st, 1886), and whereas it is important to complete said supplemental transcript without delay, it is hereby agreed that the clerk of the United States circuit court may conclude said supplemental transcript without including therein the aforesaid plan of L. H. Pilie, and the said supplemental transcript shall be as complete as if the same were included therein, and that no applications for delay shall be made to the Supreme Court of the U[nited] States because of said omission, reserv-

ing to the defendants the right to produce on the trial the original of said plan, or a certified copy thereof should they so desire.

(Signed) KENNARD, HOWE & PRENTISS &
CHAS. S. RICE,
Solicitors for Complainants.

(Signed) BAYNE & DENEGRE, *Att'ys for Def'ts.*

Photographs.—See photographs accompanying this transcript.

512 I, Edward R. Hunt, clerk of the United States circuit court for the eastern district of Louisiana, hereby certify the foregoing 122 pages to be a true and correct transcript of the original documents and papers as per agreement of counsel required to supplement the transcript now on file in the Supreme Court of the United States, No. 374 of the docket of said Supreme Court, except the "plan of L. H. Pilié, deputy city surveyor, omitted as per agreement on page 122 of this transcript, and the photographs of wharves offered in evidence by defendants agreed by counsel to go up in the original.

Witness my hand and seal of said court, at the city of New Orleans, this 4th day of October, 1886.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

513 UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

OUACHITA & MISSISSIPPI RIVER PACKET COMPANY
versus
Mrs. C. A. AIKEN *et als.* } No. 9878.

514 U. S. Cir. Court, Fifth Judicial Circuit, Eastern District of Louisiana.

In Chancery. No. 9878.

Whereas Jas. H. McKenney, clerk of the U. S. Supreme Court, has advised us that in the above case, now No. 374 docket of U. S. Supreme Court, pages 25, 6, 7, and 28 of a pamphlet entitled "U. S. circuit court, 5th judicial circuit, eastern district of Louisiana, in chancery, No. 9878, Ouachita [&] Miss. River Packet Company *vs.* Mrs. C. A. Aitken *et al.*, testimony for complainants, filed May 28th, 1883," are missing, it is hereby agreed that the certified copy attached of said missing pages made from the pamphlet filed May 28th, 1883, in the U. S. circuit court, 5th cir., eastern dist. of Louisiana, may be used to supplement the transcript now on file in the Supreme Court of the United States, to which is to be added, as per stipulation on file, the documents and papers accompanying this paper.

(Signed) W. S. BENEDICT &
BAYNE & DENEGRE,
Solicitors for Defendants.

The documents and papers referred to in the above agre ement as accompanying this paper are as follows:

1st. Copy of petition in the case of T. P. Leathers *vs.* Joseph Aiken *et als.* No 3877. Civil district court.

2nd. Copy of judgment dismissing rule for injunction and denying the writ in above case

515 3rd. Ordinance No. 6015, administration series, adopted June 18, 1879.

4th. Ordinance No. 7351, administration series, adopted Sept. 27, 1881.

5th. Ordinance No. 6938, administration series, adopted March 29, 1881.

6th. Ordinance No. 7037, administration series, adopted May 3, 1881.

7th. Ordinance No. 7282, administration series, adopted Aug. 18, 1881.

8th. Ordinance No. 799, new series, approved Dec. 16, 1867.

9th. Ordinance No. 899, new series, approved May 2, 1868.

10th. Ordinance No. 7079, administration series, adopted May 17, 1881.

11th. Also copy of advertisement, dated "Department of Commerce, City Hall, New Orleans, May 7th, 1881, signed Wm. Fagan, administrator of commerce," with certificate of clerk that the above ordinance No. 7079 and advertisement were clipped from the "New Orleans Daily States" of May 21, 1881.

12th. Copy of contract between the city of New Orleans and Henry Ellerman, dated 29th of June, 1875, before G. Legardeur, notary public.

13th. Copy of extension of contract between the city of New Orleans and Henry Ellerman, dated 21st of August, 1876, before G. Legardeur, notary public.

14th. Exhibit "C," offered by defendants, with affidavit of R. B. Mathews.

15th. Plan of L. H. Pillie, deputy city surveyor, and pho-
516 tographs of wharves, offered in evidence by defendants, both of which it is agreed may go up in the original, if the rules of the Supreme Court of the United States so permit.

It is further agreed that none of the above-mentioned exhibits shall be copied in case they are found to be in the transcript now on file in the Supreme Court of the United States, with the exception of the ordinance No. 7079, taken from the Daily States of May 21, 1881.

Feb'y 18, 1886.

(Signed) W. S. BENEDICT,
BAYNE & DENEGRE,
Solicitors for Def'ts.

CLERK'S OFFICE, UNITED STATES CIRCUIT COURT,
EASTERN DISTRICT OF LOUISIANA.

I, Edward R. Hunt, clerk of the United States circuit court for the eastern district of Louisiana, certify the foregoing pages contain true copies of a part of page 24 and all of pages 25, 26, 27, and 28 of complainants' printed book of testimony, filed in the above-entitled cause May 28th, 1883, and also a true copy of the agreement dated Feb'y 18, 1886, between counsel of the parties, and endorsed, "agreement as to supplemental transcript."

Witness my hand and seal of said court, at the city of New
517 Orleans, this 18th day of December, 1886.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk*.

518 [Endorsed:] Supreme Court U. S. 1886, October term. No. 117. The Ouachita & Mississippi River Packet Co. *et al.*, appellants, *vs.* Mrs. Catharine M. Aiken *et al.* Supplemental transcript.

[Stamped:] Office Supreme Court U. S. Filed Dec. 18, 1886. James H. McKenney, clerk.

Endorsed on cover: E. Louisiana C. C. U. S. No. 117. The Ouachita & Mississippi River Packet Company, William T. Scovell, William M. Wood, Isabel O'Pry, *et al.*, appellants, *vs.* Mrs. Catherine M. Aiken, administratrix of Joseph A. Aiken, deceased, John H. Menge, John J. Brown, and John W. Tobin, copartners doing business under the firm name of Joseph A. Aiken & Co., and the City of of New Orleans. Filed 9th October, 1883.

121-444

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 117.

THE OUACHITA & MISSISSIPPI RIVER PACKET COMPANY, WILLIAM T. SCOVILL, WILLIAM M. WOOD, ISABEL O'RAY, ET AL., APPELLANTS,

vs.

MRS. CATHERINE M. AIKEN, ADMINISTRATRIX OF JOSEPH A. AIKEN, DECEASED; JOHN H. MENGE, JOHN J. BROWN, AND JOHN W. TOBIN, COPARTNERS DOING BUSINESS UNDER THE FIRM NAME OF JOSEPH A. AIKEN & CO., AND THE CITY OF NEW ORLEANS, APPELLEES,

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF ON BEHALF OF COMPLAINANTS AND APPELLANTS.

JOHN H. KENNARD,
WILLIAM WIRT HOWE,
Of Counsel for Complainants and Appellants.

JUDD & DETWEILER, Printers.

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MRS. CATHERINE M. AIKEN, ADMINISTRATRIX OF JOSEPH A. AIKEN, DECEASED; JOHN H. MENGE, JOHN J. BROWN, AND JOHN W. TOBIN, COPARTNERS DOING BUSINESS UNDER THE FIRM NAME OF JOSEPH A. AIKEN & CO., AND THE CITY OF NEW ORLEANS, APPELLEES,

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF ON BEHALF OF COMPLAINANTS AND APPELLANTS.

ABSTRACT OF CASE.

On the 17th day of January, 1875, the council of the city of New Orleans adopted an ordinance fixing and regulating charges for wharfage, levee, and other facilities afforded by the city of New Orleans to commerce, which ordinance ordained, among other things, that the wharfage dues on all steamboats shall be fixed as follows: "Not over five days,

ten cents per ton, and each day thereafter five dollars per day. Boats arriving and departing more than once a week, five cents per ton each trip. Boats lying up for repairs during the summer months to occupy such wharves as may not be required for shipping for thirty days or under, one dollar per day."

On the 17th of May, 1881, the New Orleans city council likewise adopted an ordinance providing for the building and repairing of the wharves and levees of New Orleans and for farming the revenues thereof. This ordinance is made part of the bill,

Under this ordinance the city leased to defendants—appellees—the wharves of New Orleans for a term of five years, commencing of the 29th day of May, 1881, and ending on the 28th day of May, 1886. The lessees were allowed to make charges as fixed by ordinance of January 17th, 1875, heretofore referred to.

The lessees accepted the wharves, &c., as they stood May 29th, 1881.

The lease, and especially sections 5, 6, 7, 8, 9, 10, 11, 12, and 13, required repairs, and stipulated the manner and style of same, and also stipulated for certain *new works.*

The lessees were obligated to pay the city forty thousand dollars ($40,000) annually, $30,000 for harbor police, $10,000 for salaries of wharfingers, &c., and to keep the wharves lighted with electric lights.

Lessees were also bound by section 14 of said ordinance to *furnish* all necessary apparatus and *light* with the electric light all the levees, landings, and wharves from Toledano street to Congress street, being the entire business river front of the city of New Orleans.

Lessees were bound also by section 13 of said ordinance "to build *new* revetments."

Some slight modifications were afterwards made in this lease of no special importance to this case, as appears from record, p. 1 (written).

Mrs. Joseph A. Aiken and the other defendants in this bill were by ordinance No. 7473 A. S., adopted December 6, 1881, recognized by the city as the representatives and successors of Joseph A. Aiken, deceased, the original lessee.

The bill of complaint was filed in the United States circuit court for the sixth circuit and eastern district of Louisiana March 25, 1882. (M. R., p. 1.)

A rule for an injunction "*pendente lite*" was taken March 25, 1882 (M. R., p. 71), which was passed upon April 25, 1882, and the injunction was denied. (M. R., p. 77.)

On the 3d of May, 1883, a final decree was rendered dismissing complainant's bill at their cost. (M. R., p. 388.)

This appeal is prosecuted from that final decree.

ASSIGNMENT OF ERROR.

I.

The appellants assign for error in this final decree of the circuit court the refusal of the injunction prayed for, the dismissal of complainants' bill and compelling them to pay costs of the suit, and for cause of error appellants assign that said decree deprives them of that protection which the Constitution of the United States guarantees them, in that it validates the ordinance and lease in question, which are null and void, being in contravention of the laws and Constitution of the United States. They (the ordinances and lease) undertake to impose and to authorize the collection

from complainants, who are owners of steamboats, as set forth in the bill, under the name and guise of wharfage dues or charges, a tax or dues for revenue, to be devoted in *large part* to the support and pay of the salaries of the public police of the City of New Orleans, who render a large part of their services, if not all, to the city of New Orleans and not to commerce.

II.

That lessees are allowed to collect from the shipping which uses the wharves of New Orleans an illegal and unconstitutional tax in that a portion of same is, by the lease, to be devoted to making *original constructions,* whereas under the jurisprudence of this court no wharfage tax is allowable, except it be in the nature of a reasonable compensation for facilities furnished by the City of New Orleans with her own money.

III.

That the charges allowed by said lease are wholly out of proportion to the facilities furnished, and are so excessive and so far beyond a reasonable compensation that they amount to a tax on tonnage, and violate section 10, article I of the Constitution of the United States, section 8, article I, section 10, article I, section 9, article I, and the act of Congress, April 8th, 1812, admitting the State of Louisiana into the Union.

IV.

That no tax whatever is allowed by the Constitution and laws of the United States which has for its object or operates in practice, to wrest from shipping revenue intended to be

or which is in practice used for making original structures, that wharfage taxes are grounded upon the rights attaching to proprietorship, hence cities must own their wharves before they can charge for using them.

Authorities.

Appellants rely upon the following authorities as well as upon such as may be hereafter furnished.

Steamship Company *vs.* Port Wardens, 6 Wall., p. 31.
State Tonnage Cases, 12 Wall., 577.
Cannon *vs.* New Orleans, 20 Wall., 207.
Parkersburg O. River T. Co. *vs.* City of Parkersburg.
Packet Co. *vs.* Keokuk, 95 U. S., 80.
Packet Co. *vs.* St. Louis, 100 U. S., 423.
Guy *vs.* Baltimore, 100 U. S., 434.
Packet Co. *vs.* Cattletsburg, 105 U. S., 559.
Sec. 4220 R. Stats. U. S.
State Tonnage Taxes, 12 Wall., 412.
Pette *vs.* Morgan, 19 Wall., 581.
C. C. of La., 455, 863, 20 Ann., 308; C. C., 2717.

Testimony.

We rely upon the testimony in the record for complainants, and ask that the decree of the lower court be reversed, and that the ordinance and lease in question be declared null and void.

Respectfully submitted.

John H. Kennard,
William Wirt Howe,
Of Counsel for Complainants and Appellants.

121-444

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Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF ON BEHALF OF COMPLAINANTS AND APPELLANTS.

ABSTRACT OF CASE.

This is an appeal from the circuit court of the United States for the eastern district of Louisiana. The decree of the lower court was against the complainants, denying an injunction "*pendente lite*," and on final hearing. (P. T., p. 37 and 295.)

The contention is briefly as follows: The complainants are owners of a large number of steamboats, all of which are employed in carrying passengers and freight for hire to and from the port of New Orleans, upon the Mississippi river, and other ports and places on said river, and on rivers and waters tributary thereto, and are all enrolled and licensed for the coasting trade of the United States, and to carry on said trade between the different States bordering on the Mississippi river and its tributaries. (P. T., p. 2.)

They complain that the city of New Orleans has, under the guise of wharfage taxes, imposed certain illegal taxes and tonnage duties contrary to the Constitution of the United States, as specifically set forth in the bill of complaint. (P. T., pp. 2, 3, 4, 5, 6.)

A lease for five (5) years from May 30, 1881, until May 28, 1886, was made by the city of New Orleans of all the wharves in front of said city to the defendants, except certain wharves previously leased to other parties, and said defendants were authorized by said lease and the ordinances under which it was framed to make the charges complained of. (P. T., pp. 3, 4, 5.)

Complainants specially aver that such charges are illegal, inasmuch as they are made partly with a view to creating a fund with which to make certain specified *original constructions*, and out of which the so-called harbor police were to be *exclusively* paid when their services are rendered only in small part to commerce (P. T., pp. 4 and 5); that provision was made in said lease for the erection and running of electric lights along the whole front of the city, several miles, at a cost of $25,000 per annum during the time (five years) of the lease. (P. T., p. 7.)

Complainants further say that under the name and guise of wharfage dues or charges, ordinance No. 7079, under which the lease is framed, undertook to enforce and authorize the collection of an illegal and unconstitutional tax of ten thousand dollars ($10,000) for the pay of the salaries of officers, clerks, and other employés of the city of New Orleans belonging to the department of commerce of said city; and said ordinance further provides for the lighting, in an expensive and useless manner, at the expense of commerce of said wharves, and also undertakes to impose a tax or revenue, which, during the term of the lease, will amount to many hundreds of thousands of dollars, for the rebuilding and erection of public levees, bulkheads, and revetments of levees, the principal and almost entire object of which is to protect the general public and private property of the city of New Orleans and its inhabitants, which people, in the protection of their property by said works, has nearly or quite the exclusive benefit of them (the taxes), while the shipping and commerce, and especially the steamboats owned by complainants, derive and can derive little or no benefit therefrom. (P. T., p. 7.)

Complainants further show that although nearly ten (10) months have elapsed since the date of the lease, no electric lights, as required by ordinance No. 7079, have been placed upon the wharves and levees (P. T., p. 10); that, notwithstanding this fact, the charges have been made and taxes collected as though they were in existence; that said charge is a naked burden, without pretence of a consideration given or facilities furnished.

ASSIGNMENT OF ERROR.

I.

The appellants assign for error in this final decree of the circuit court the refusal of the injunction prayed for, the dismissal of complainants' bill, and compelling them to pay costs of the suit; and for cause of error appellants assign that said decree deprives them of that protection which the Constitution of the United States guarantees them, in that it validates the ordinance and lease in question, which are null and void, being in contravention of the laws and Constitution of the United States. They (the ordinances and lease) undertake to impose and to authorize the collection from complainants, who are owners of steamboats, as set forth in the bill, under the name and guise of wharfage dues or charges, a tax or dues for revenue, to be devoted in *large part* to the support and pay of the salaries of the public police of the city of New Orleans, who render a large part of their services, if not all, to the city of New Orleans and not to commerce.

II.

That lessees are allowed to collect from the shipping which uses the wharves of New Orleans an illegal and unconstitutional tax, in that a portion of same is by the lease to be devoted to making *original constructions*, whereas under the jurisprudence of this court no wharfage tax is allowable, except it be in the nature of a *reasonable compensation* for facilities furnished by the city of New Orleans with her own money.

III.

That the charges allowed by said lease are wholly out of proportion to the facilities furnished, and are so excessive and so far beyond a reasonable compensation for facilities furnished that they amount to a tax on tonnage and violate section 10, article 1, and section 9, article 1, of the Constitution of the United States, and the act of Congress of April 8, 1812, admitting the State of Louisiana into the Union.

IV.

That no tax on shipping is allowable, under the United States Constitution, which has for its object or operates in practice to wrest from shipping revenue intended to be or which is in practice used for making original structures; that wharfage taxes are grounded upon the rights attaching to proprietorship (exclusive ownership). Hence, municipal corporations must construct improvements with their own money before they can charge commerce for using them; that any tax imposed for the use of a wharf or other facility *not erected or furnished at the expense of the municipal corporation is a naked burden and a tonnage tax.*

V.

The court below erred in holding that the city of New Orleans, under authority delegated by the State of Louisiana, could lawfully regulate commerce, as done in this case, in the absence of action by the Congress of the United States.

ARGUMENT.

The questions to be discussed in this case have been so often presented in some shape or other to the courts of the country that we should hardly feel justified in presenting them anew were there an identity of law and fact between this case and its predecessors.

It will perhaps simplify our argument if we state in advance that we do not propose to antagonize any adjudged case, but we hope to be able to show that the case of complainants can be sustained in strict accordance with the various rulings in antecedent cases. We contend that no case exactly similar to this has ever yet been presented to this court.

We have found no case in which the attempt was made to raise a revenue by taxing shipping in order to erect *original* wharves or other original structures.

We have found no decision of this court which warrants wharfage taxes in amounts exceeding a reasonable compensation for facilities furnished. The right to impose such taxes is a right of *proprietorship* and not a prerogative of government.

WHAT WE ADMIT.

At the outset we desire to be distinctly understood as not denying the authority of Steamship Co. *vs.* Port Wardens, 6th Wallace, page 31; State Tonnage Tax Cases, 12th Wallace, 204; Cannon *vs.* New Orleans, 20th Wallace, 577, nor the Parkersburg, Ohio River Transportation Company, appellant, *vs.* The City of Parkersburg, 107 U. S., p. 704.

This case is one of the last utterances of this court on the questions at issue here, and is supposed by the press and the bar to have gone further in sustaining the charges made for wharfage than any preceding case. We shall simplify matters, therefore, by reviewing, in brief detail, the leading features of this case, and contrasting them with the case at bar. The jurisdiction in that case was denied on the ground that the wharfage imposed by the ordinance in question was not a tonnage tax, and the parties to the bill were not of such a character as to give the court jurisdiction on account of citizenship.

The Parkersburg case cites almost all the authorities that have ever been cited in any preceding case on this question, and it is, therefore, unnecessary to review the same *seriatim*. We content ourselves with saying that no case there cited conflicts with the position which we here assume.

WHAT WE DON'T DENY.

We don't deny the authority of the city of New Orleans to impose a charge upon commerce for wharfage of such a nature that it can reasonably be considered as a compensation for the use of the wharves erected by the city at her own expense, if such a charge can properly be included within the category of charges as a compensation.

We also concede that in such case, although such charge may be exorbitant, we would be without relief in the United States courts.

Our contention is that if the charge, no matter by what name called, is of such a nature as to prevent its inclusion under the head of compensation for use, it ceases to be a

charge for wharfage and becomes *a tonnage tax*, and is violative of the Constitution of the United States. Any tax not in the nature of a compensation for facilities furnished we understand to be a prohibited tax.

In Transportation Company *vs.* Parkersburg, 107 U. S., 691, it was held "that the character of the charges must be determined by the *ordinance itself*, and as in that case the ordinance, on its face, imposes charges for the use of the wharf *only*, and not for entering the port or lying at anchor in the river, the court, though it might deem them unreasonable and exorbitant, will not entertain an averment that they *were intended as a duty of tonnage*, nor inquire into the secret purpose of the body imposing them."

In the instant case the ordinance, *on its face* (P. T., p. 15, ordinance No. 7079), shows clearly that compensation was not intended to be the measure of the charges. Several distinct provisions for new structures are contained in it. Section 5 (P. T., pp. 16, 17) provides "for building anew all wharves and bulkheads which from general decay may require the same, and to *rebuild* any and all wharves and bulkheads where the same now exist, or which may *be constructed* during the term of their lease, that may be damaged or destroyed, in part or *in whole*, from any cause whatsoever."

Section 6 (P. T., p. 7) provides "that in making the repairs to and in *building new wharves* the piles used shall be either of pine or cypress timber of the best quality, not less than eleven by eleven inches," &c.

Section 11 (P. T., p. 9) provides that the person or persons to whom shall be adjudicated said contract shall be bound to build *all additional new wharves* that may be necessary, provided he be not required to expend on such *new wharves*

more than $25.000 in any one year, the said *new* wharves being calculated at the rate of $20.00 per square, and no more.

The term *new wharves*, as expressed in this section (11) " shall be construed as meaning *new wharves* where there are *no* wharves now existing, and shall not apply to the rebuilding of wharves to *replace* old ones, nor to the extension of old wharves into the river, so as to obtain the depth of water, as before specified, at the water line of the wharves."

Extra care seems to have been taken to prevent the lessees evading the duty of building *new wharves.*

Section 14 (P. T., p. 20) provides that the person or persons to whom shall be adjudicated said contract shall be bound *to furnish all the necessary apparatus* and light with electric light all the lines, landings, and wharves from Toledano street, in the fourth district, to Congress street, in the third district.

Section 26 provides (P. T., p. 23) " that the said lease shall be adjudicated to the person or persons agreeing to receive the lowest rate or rates of wharfage or dues therefor, and to pay annually to the city of New Orleans in equal monthly installments the sum of forty thousand ($40,000) dollars, $30,000 of which shall be devoted to the payment and maintenance of a harbor police, &c., and the remaining $10,000 to be set apart and devoted exclusively to the payment of the salaries of wharfingers, contravention clerks, signal officers, and other employees on levees, and in connection with the foregoing to keep the wharves lighted with electric lights, as hereinafter provided."

Our contention, in a nut-shell, is that if the charge, no matter by what name designated, is of such a nature as to

prevent its inclusion under the head of compensation for use, it ceases to be a charge for wharfage and becomes a prohibited tonnage tax.

In other words, the charge must be made, in the language of Justice Bradley in the Parkersburg case (107 U. S., 691), "*for wharfage and nothing else*," in order to escape conflict with the Constitution.

In the same opinion it is held that "the wharf *must be shown* to have been *built and maintained* by the city as its property." If *this be shown* and the charge imposed was for landing at and using the wharves, "*and nothing else*," then, although the amount be exorbitant, it still remains a wharfage charge and the allegation in the bill cannot be received "*against the terms of the ordinance itself*."

In the instant case the allegations of the bill are taken *from the ordinance itself* and are not against its terms; hence we contend that the Parkersburg case is for and not against us.

Bearing in mind that it is distinctly laid down in this case, as in all others, that the charge, in order to be considered a wharfage charge and not a tonnage duty, must be a charge *for the use* of a wharf; it must also be a charge for the use of a wharf erected by the corporation *out of its own money* and at its own expense. The very idea of a charge for the use of a thing necessitates the presumption of *the previous existence* of the said thing to be so used. How can this charge be said to be for the use of these wharves, and thereby to escape conflict with the Constitution of the United States, when upon the face of the ordinance there appears the following stipulations with reference to things not in ex-

istence on the day of the passage of the ordinance and the making of this lease?

Section 13 of the ordinance in evidence provides "that the lessees are bound to keep in good order and condition during the whole term of their contract all revetments on the outside of the levees in front of the districts, the said 1st, 2d, 3d, and 4th districts; to build all *new* revetments; to replace them that *may perish* or be destroyed from *any* cause; to build during the first two years of said lease *the piled bulkheads in the 3d district from Marigny to Delery streets*" (which is now substituted by the payment of $59,500), "and to keep the same always in the best order and condition during the whole term of the said contract, and to rebuild the same if destroyed, whether by *decay*, caving of the bank or bed of the river, storm, or otherwise."

Section 14 of the ordinance provides "that the said lessee is bound to furnish all necessary apparatus, and light with the electric light all the levees, landings, and wharves from Toledano street to Congress street, being the entire business river frontage of the city of New Orleans, the lamps or lights to be placed at no greater distance than 250 feet apart," etc.

Section 26 of the ordinance provides "that the said lease or the farming of the said wharfage charges or dues are to be adjudicated to the person or persons agreeing to receive the least rate or rates of wharfage, and to pay annually to the city of New Orleans, in equal monthly installments, the sum of $40,000, $30,000 of which should be devoted to the maintenance of a harbor police for the protection of commerce along the river front of the city, and the remaining $10,000 to be set apart and devoted exclusively to the payment of the salaries of the wharfingers and contravention

clerks, signal officers, and other employees of the levees," etc.

We are utterly at a loss to see how the above-enumerated charges can be included under the head of *reasonable compensation* for the use of the wharves. As a matter of history, of which there is plenary proof in the record (Record, p. 61), and without which historical knowledge of such fact could be taken by the court, there were not in existence for more than a year after the running of the present lease commenced (the lease commenced to run May 29, 1881; the erection of electric lights only began in November, 1881) any electric lights on the levee, and it is not denied that the rate of wharfage charged prior to the time when the actual use of such electric lights began was the same, equally onerous, as after their completion. "The lessees were not compelled within any particular date to furnish electric lights." (J. H. Menge, one of the defendants, Record, p. 61.) How, then, can it be said that the shipping, which paid, prior to the time that the electric lights were turned on, a charge based upon the expense incident to the erection of said light, ever received or can receive any consideration for the money expended by them? We could not present more forcibly this view than has been done by his honor Judge Pardee, in the case of Leathers *vs.* Aiken (9th Federal Reporter, page 681), which case was the immediate precursor of this, and is identical substantially, except that the bill of complaint in that case did not contain the allegation with reference to the illegality of a charge for *original construction*. Judge Pardee says (page 681, Federal Reporter, volume 9):

"From these propositions, so well sustained by authority, the following are legitimate corollaries: No charges can be made on vessels landing at wharves of a municipal corporation for facilities *not furnished.* The commerce of this year cannot be taxed to furnish facilities *for the next year;* no charges can be made *on the promise* to furnish facilities to commerce."

What else were these charges based upon? The expense to be incurred in erecting the electric lights and collected *prior* to the time that any light was furnished, but charges for facilities *not furnished; taxation of the commerce of one year to furnish facilities for the next year;* charges upon the *promise* to furnish facilities to commerce; all of which are denounced by Judge Pardee as illegal. Such are clearly tonnage duties and violate the letter of the law, and in the Parkersburg case above referred to Justice Bradley states that it is conceded in the bill that the city of Parkersburg *built the wharves;* that the charge complained of was a charge for *wharfage only,* and, therefore, he refuses to inquire into secret intent of the body imposing the charge, and said that whether it was the one thing or the other—that is, a wharfage charge or a tonnage duty—must be determined *by the ordinance or regulation itself.*

Accepting this as an accurate statement of the law, we contend that wherever the ordinance or the regulation itself (as in this case), which clearly establishes the fact that provision in terms is made for four things, to wit:

The payment of $59,500 for piled bulkheads in the 3d district, $25,000 a year, provided for in section 11 of the ordinance, to be appropriated to the building of additional new wharves yearly; a charge for electric lights; and $40,000,

set apart by section 26 for harbor police, are charges which appear upon the face of the ordinance which clearly cannot be classed as charges *for the use of the wharves.* They are, therefore, such charges as would have induced, in the Parkersburg case, a different conclusion by this Court had the ordinance there in question contained equivalent clauses, because then the Court would have been in a situation to determine, *by the ordinance or regulation itself*, whether it was a charge for use or a prohibited tonnage duty.

"Wharfage," says Justice Bradley, "is a charge for the use of a wharf, made *by the owner* thereof, by way of *rent* or *compensation.* A duty of tonnage is a tax or duty charged for th *p rivilege* of entering or loading or lying in a port or harbor, and can only be imposed by the Government. Whether a charge is wharfage or a duty of tonnage is a question not of intent, but of fact and law. Of fact, whether it is imposed for the use of a wharf or for the privilege of entering a port." It might have been added, to make the definition complete, or for anything *else than the use of a wharf.* "Of law, whether according as the fact is, it is wharfage or a duty of tonnage."

WHAT IS A TONNAGE DUTY?

We think it of vital importance, in the discussion of this case, to keep always clearly in mind the exact distinction between a wharf charge and a duty of tonnage.

We understand the fact that the rates are graduated by the size or tonnage of the vessel is of no consequence in this connection. Justice Bradley so states it in the Parkersburg case, and adds:

"This does not make it a duty of tonnage in the sense of the Constitution and the acts of Congress. So we have expressly decided in several recent cases: Cannon *vs.* New Orleans, 20 Wallace, 577; Packet Co. *vs.* Keokuk, 95 United States, 80; Packet Co. *vs.* St. Louis, 100 United States, 423; Guy *vs.* Baltimore, 100 United States, 434; Packet Co. *vs.* Catlettsburg, 105 United States, 559. When the Constitution declares that 'no State shall, without the consent of Congress, lay any duty of tonnage,' and when Congress, in section 4220 of the Revised Statutes, declares that 'no vessel belonging to any citizen of the United States trading from one port within the United States to another port within the United States, or employed in the bank, whale, or other fisheries, shall be subject to tonnage tax or duty, if such vessel be licensed, registered, or enrolled,' they mean by the phrases 'duty of tonnage' and 'tonnage tax or duty' a tax or duty on a vessel for the privilege of entering a port, and although usually levied according to tonnage, and so acquiring its name, it is not confined to that method of rating the charge. It has nothing to do with wharfage, which is a charge against a vessel *for the using* or lying at a wharf or landing. The one is imposed by the Government, the other by the *owner* of the wharf or landing."

Just here we would add that any charge made against a vessel that is not "for using or lying at a wharf or landing" *amounts to a prohibited charge.* In other words, any charge made in the name of wharfage charge, unless it be a compensation for the use of a wharf, cannot be a charge on account of proprietorship, but must be a charge imposed by the Government.

Has this court in the Parkersburg case gone to the extent of saying that a charge, though it may be ranked under the head of

wharfage, cannot be so exorbitant as to justify the ship-owner in invoking the protection of the Constitution and laws of the United States?

We think not, and our opinion is based upon the following guarded language of Justice Bradley, to wit:

"It is obvious that the mode of rating the charge in either case, whether according to the size or capacity of the vessel or otherwise, has *nothing to do* with its essential nature.

"It is also obvious that since a wharf is *property*, and wharfage is a charge as rent for its temporary use, the question whether the owner derives more or less revenue from it, or whether more or less as the cost of building and maintaining it, or what disposition he makes of such revenue can in no way concern those who make use of a wharf and are required to pay the regular charges; therefore, provided always, that the charges are *reasonable and not exorbitant.*

"It is undoubtedly," he adds, "a general rule of law in reference to all public wharves that the wharfage *must be reasonable.*"

We therefore say that wherever the evidence shows, more especially where upon the face of the ordinance itself it is shown, that the charges are not reasonable *but exorbitant*, then under the authority of the Parkersburg case they cease to be wharfage charges and become a prohibited tonnage tax.

Our contention therefore is that the moment we have shown that upon the face of the ordinance itself there are stipulations against the lessees which *preclude* the idea of compensation for use we have established the existence of a prohibited tonnage duty, and we therefore earnestly contended, upon the trial of the rule for a preliminary injunction, that said injunction should have issued upon the

face of the papers, because there was sufficient evidence lying on the face of the ordinance to show that it was unconstitutional, and that upon the trial of the merits the identical relief asked for in our preliminary injunction would have to be granted.

We therefore contended on the trial of that rule that the ordinary rule against the issuance of preliminary injunctions in such cases should have been relaxed, and that the unconstitutionality of the act being patent upon the face of the ordinance should have been so declared. In the case of Steamship Company *vs.* Port Warden 6, Wallace, p. 33, we find (Chief Justice Chase, the organ of the Court) an exposition of the clause of the Constitution applicable to this case, and which has been adopted frequently since by the Supreme Court, unsurpassed in clearness. He says:

"It is claimed, however, that the tax is for compensation to the master and wardens, whose duty it is to perform, when called upon the various services required of port wardens, and that the law for its collection stands therefore on the same constitutional grounds as the State laws authorizing the collection of pilotage.

"But there are two answers to this proposition:

"The first is that *no* act of Congress recognizes such laws as that of Louisiana as proper and beneficial regulations, while the State laws in respect to pilotage are *thus* recognized.

"The second is that the right to recover pilotage and half pilotage, as prescribed by State legislation, rests not only on State laws, but *upon contract.* Pilotage is compensation for services performed; half pilotage is compensation for services which the pilot has put himself in readiness to perform by labor, risk, and cost, and which he has *actually offered* to perform. But in the case before us there were *no services*

and no offer to perform any. The State law is express. It subjects the vessel to the demand of the master and wardens whether they be called on to perform service or not.

"It may be true that the existence of such a body of men is beneficical to commerce, but the same is true of the government of the State, of the city government, of the courts, of the whole body of public functionaries. If the constitutionality of the charge for the benefit of the master and wardens can be maintained upon the ground that it secures compensation for services it is difficult to perceive upon what grounds the constitutionality of *any* State law imposing taxes for the benefit of the State government upon vessels landing in its ports can be questioned.

"We think it quite clear, therefore, that the regulation of commerce made by the act before us comes within none of the limitations or exceptions to the general rule of the Constitution; that the regulation of commerce among the States is in Congress. We think, also, that the tax imposed by the act of Louisiana is, in a fair sense of the word, a duty on tonnage. In the most obvious and general sense it is true those words describe a duty proportioned to the tonnage of the vessel; a certain rate on each ton. But it seems plain that, taken in this *restricted* sense, the constitutional provision would not fully accomplish its intent. The general prohition upon the States against levying duties on imports or exports would have been *ineffectual* if it had *not* been extended to duties on the ships which serve as the vehicles of conveyance. This extension was doubtless intended by the prohibition of *any* duty on tonnage. It was not only a *pro rata* tax which was prohibited, but *any* duty on the ship, whether a fixed sum upon its whole tonnage or a sum to be ascertained by comparing the amount of tonnage with the rate of duty. In this view of the case the levy of the tax in question is expressly prohibited."

As before said, this expression has since been uniformly adopted as a proper interpretation of the constitutional clause.

In 20th Wallace, Cannon *vs.* New Orleans, Justice Miller referred with approval to the case above cited, and says, on p. 581:

"In the first of these cases" (Steamship Company *vs.* Port Wardens, 6th Wallace, 31) "the late Chief Justice, who delivered the opinion, seemed inclined to guard against too narrow a construction of the clause lest its spirit and purpose might be invaded. He says 'that, in the most obvious and general sense, it is true the words describe a duty proportioned to the tonnage of the vessel; a certain rate on each ton. But it seems plain that in this restricted sense the constitutional provision would not fully accomplish its intent. The general prohibition against laying duties on imports or exports would not have been effectual if it had not been extended to duties on the ships which serve as the vehicles of conveyance. This extension was doubtless intended by the prohibition of any duty on tonnage. It was not only a *pro rata* tax which was prohibited, but any duty on the ship, whether a fixed sum upon its whole tonnage or a sum to be ascertained by comparing the amount of tonnage with the rate of duty.' The other two cases" (State Tonnage Taxes, 12th Wallace, 212, and Peete *vs.* Morgan, 19th Wallace, 581) "fully sustain the proposition as we have stated it.

"In saying this we do not understand that this principle interposes any hindrance to the recovery from any vessel landing at a wharf or the pier *owned* by an individual or by a municipal or other corporation a just compensation for the use of such property.

"It is a doctrine too well settled and a practice too common and two essential to the interests of commerce and

navigation to admit of a doubt that for the use of such structures, *erected by individual* enterprise and recognized everywhere as *private* property, a reasonable compensation can be exacted; and it may be safely admitted also that it is within the power of the State to regulate this compensation so as to prevent extortion, a power which is often very properly delegated to the local municipal authority.

"Nor do we see any reason why, when a city or other municipality is the owner of such structures, *built by its own money*, to assist vessels landing within its limits in pursuit of their business, the city should not be allowed to exact and receive this reasonable compensation as well as individuals. *But in the exercise of this right care must be had that it is not made to cover a violation of the Federal Constitution in the point under consideration.*

"We are better satisfied with this construction of the Constitution from the fact that this is one of the few limitations of that instrument on the power of the States which is not *absolute*, but which may be removed wholly or modified by the consent of Congress.

"The cases which have recently come before this court in which the State by itself or by one of its municipalities has attempted to levy taxes of this character clearly within the letter and the spirit of the constitutional prohibition show the necessity of a rigid adherence to the demands of that instrument. If hardships arise in the enforcement of this principle, and the just necessities of a local commerce require a tax which is otherwise forbidden, it is presumed that Congress would not withhold its assent if properly informed and its consent requested.

"This is a much wiser course, and Congress is a much safer depositary of the final exercise of this important power than the ill-regulated and overtaxed towns and cities, which are not likely to look much beyond their own needs and their own interests.

"We are of opinion that the ordinance under which the levee dues were assessed upon the plaintiff's vessel is unconstitutional and void."

We pause at the conclusion of this extract to say that if it were necessary to the commerce of New Orleans that money should be raised by taxation upon the shipping, entering, and lying at this port for the purpose of making original constructions and for the purpose of expenditures, as in the case of the harbor police, not exclusively in the interests of commerce; if it were necessary that so large a sum as fifty-nine thousand dollars ($59,000) for bulkheads was necessary to be paid in advance for their protection; if twenty-five thousand dollars (25,000) per annum was necessary to be set aside for the construction of new wharves; if the sum of money expended after the collection of this wharfage tax had commenced and before the completion of the electric lights was necessary, and should have been charged against commerce, the legal power to make such charges should have been sought by the City of New Orleans at the hands of Congress, and we may venture to say, in the language of Justice Miller, that if "the just necessities of a local commerce" were shown to that body to require such a tax, it is presumed that Congress would not have withheld its assent. This, in the language of Justice Miller, would have been "a much wiser course, and Congress is a much safer depositary of the final exercise of this important power than the ill-regulated and over-taxed towns and cities, which are not likely to look much beyond their own needs and their own interests."

There is no city in the United States to which this expression of opinion is more applicable than the city of New Orleans.

The only reason which we are able to assign for the question at issue in this case not having been sooner passed upon by the highest court of the land is that the population of no city of importance in the United States has been willing to sleep so long upon their rights as the population of New Orleans. We are able, after diligent search, to find no ordinance of any city regulating wharfage which provides for the collection *in advance* from commerce of money necessary to make an original construction. It would seem that this proposition with regard to the illegality of taxing commerce for original constructions is too plain to admit of serious doubt. As a matter of history, it is conceded that the original naked banks of the Mississippi river were free to the whole world. Their freedom was especially provided for in the treaty by which we acquired Louisiana. It is equally true that the right to charge at all, at any time, originated in the right of *proprietorship*, exclusive ownership. A private individual erecting a wharf on his own property has the same right to make a charge against any boat landing at his wharf as the city of New Orleans has.

But such a right arose only when he had made, *at his own expense*, such improvements on his own front.

The city of New Orleans in this respect differs only *in size* from the private individual. Her right to levy a wharfage tax depends as absolutely as does that of the private individual upon *proprietorship*, and it is just as impossible for her legally to assess and collect a tax for any improvements to be made as it is for a private individual to collect

from the shipping for the use of his own naked bank money sufficient to erect a wharf, for the use of which he shall afterwards be entitled to a reasonable compensation.

Bearing in mind this point, whenever any charge for wharfage is made for the use of a thing *not in existence* it ceases to be a charge made by virtue of proprietorship, and becomes a charge made by reason of some supposed governmental sovereignty.

In other words, it is a charge made without any reference to the benefits to be received.

It is nothing more nor less than an exaction made by a power which the ship-owner cannot control, and it was particularly to prevent such impositions as this that the prohibitions were inserted in the Constitution of the United States.

This view, with reference to proprietorship, is distinctly recognized as correct by Justice Bradley in the Parkersburg case, so lately rendered. He says, in the closing part of his opinion: "The gravamen of the bill is really nothing but a complaint against exorbitant rates of wharfage. These rates are established by a municipal body, itself the *proprietor* of the wharves, and professing to act under the authority of State law."

OPPOSITION HERE MADE NOT CAPTIOUS.

Under the law and evidence of this case we might with propriety have asked, as was done in the Cannon case, that the ordinance in question be declared unconstitutional and null; but we were anxious to avoid any interference with the legitimate commerce of the port, and therefore have tendered six cents a tor, as shown by our bill, and only ask

that the decree of the court reduce the charge of wharfage from ten cents, as shown in the ordinance, to six cents. This course has met with approval in State Railroad Tax Cases, 92 U. S., pp. 616 and 617, and entitles us to any and all relief possible to be given.

In that case, however, there was no violation of the Constitution, either in the statute or in its administration; hence the greater necessity of having made a tender of so much of the tax as the parties complainant could reasonably have been charged.

In the case at bar, we understand, as a matter of law, we were not under the same necessity to make a tender of a portion of the tax, because we claim the ordinance imposing it to be null and void and in conflict with the Constitution, but out of abundant caution and with the sincere desire not to impede the regular working of the business in this port we have made the tender of six cents a ton, and, upon its refusal, have paid the tax under protest, about which there is no dispute.

No inconvenience whatever will be caused the commerce of the port by such reduction if the evidence relied upon were the sole test as to the unreasonableness of the charge. If it should be determined that the tax to raise a revenue for an original construction is unconstitutional the question of reasonable compensation *vel non* would not arise at all, but for the offer made by us in the bill to pay six cents, because there can be no discretion exercised by the city government acting under a law which is itself unconstitutional. In order to authorize the city government to sit in judgment at all upon the question as to whether the charge is a reasonable charge or not they must derive authority from an

ordinance which is not in conflict with the Constitution of the United States.

HOW WOULD THIS QUESTION BE DETERMINED UNDER THE LAW OF LOUISIANA?

Suppose, for the sake of argument, that jurisdiction in this case can be maintained on the ground of citizenship of the parties, and that the conclusion reached was based solely upon what would be considered a reasonable charge, according to the laws of Louisiana, would the rate of ten cents a ton be reasonable or unreasonable?

Under the jurisprudence of Louisiana it may be safely affirmed that the question whether such charges as these are reasonable or unreasonable in the last resort is a judicial question. (Widow R. Lecoul *vs.* The Police Jury of the Parish of St. James, 20 An., 308.)

Civil Code, article 455, reads:

"The use of the banks of navigable rivers or streams is public; accordingly, every one has a right freely to bring his vessels to land there; to make fast the same to the trees which are there planted; to unload his vessels; to deposit his goods; to dry his nets, and the like.

"Nevertheless, *the ownership* of the river banks belongs to those who possess the adjacent lands."

Article 863 of the Civil Code contains the permission that is given to corporations to build these structures. It reads: "The corporations of cities, towns, and other places may construct on the public places, in the beds of rivers and on their banks, all buildings and other works which may be *necessary* for public utility, for the mooring of vessels, and the dis-

charge of their cargoes, within the extent of their respective limits."

As before stated, the question of reasonable compensation *vel non* is a judicial question, and must be decided upon the evidence adduced on the trial of each case.

What is the evidence in the case at bar? We have the undisputed testimony of a large number of intelligent witnesses, to be found in the record (pp. 135 to 278, covering 143 pages), to the effect that the present charge is excessive, and that six cents a ton is *ample* to afford a reasonable compensation for all the facilities offered, and to enable the city to keep in good repair the wharves.

Among these witnesses we call special attention to the testimony of E. A. Burke, the present State treasurer and late administrator of improvements of the city of New Orleans. While occupying the latter position it was within his province to look specially after the wharves. He has made a more exhaustive examination of the question than can be found in the archives of the city. He is a man of unusual intelligence, remarkable accuracy for figures, business tact, and a capacity for managing the largest enterprises, and paying an unusual attention to the smallest details, that is conceded by all who know him to be remarkable. We invite special attention to his Exhibit "A" (page 278 of the record). We also invite special attention to his testimony, to be found on pages 144–'6 of the record, and pages 242, 243. At page 209, after full questioning as to the details of the lease, we propounded to him the following questions, having previously read (the stipulations in the lease looking to an original construction), to which we specially objected.

We asked the following questions:

"Q. Now, I wish to know if the various specifications, or any of them, just read, were eliminated, were excluded, from this lease; or, in other words, if the lessees were not compelled to make the expenditures that have been enumerated in my question, whether the present rate of wharfage, with which you are familiar, would or would not be in excess of a reasonable compensation for the use of the wharves?

"A. I believe it would be in excess—largely in excess.

"Q. Largely in excess?

"A. Yes, sir.

"Q. I would state to the witness that we have in our bill of complaint signified our willingness to pay 6 cents instead of ten cents. I would like to ask you whether, eliminating the items I have just read, whether 6 cents a ton instead of 10 would not be a reasonable compensation?

"A. The present rate, I understand, is 10 cents a ton for steamboats?

"Q. Yes, sir.

"A. What is the question—say?

"Q. Would not 6 cents instead of 10 be a reasonable compensation to the lessees for the requirements of the lease, eliminating the items which I specified and which I contend are extra?

"A. I think so."

In making the above estimate it will be observed that Major Burke makes the most liberal allowance for unusual expenditures caused by the rapid decay of the wharves. He allows for a reconstruction in his estimate of the entire wharves every five years (R., p. 278). He takes into consideration in his estimate of it that under the law the lessees are obliged to decrease their wharfage rates 10 per cent. for the third year, 20 per cent. for the fourth year, and 20 per

cent. for the fifth year. Being questioned specially on this point, he says:

"I considered that decrease and against that regarded it *as more than offset* by the probable increased tonnage of the port in the course of that time."

When asked whether as a matter of fact he did not know that the tonnage has not increased of late in New Orleans, he answered:

"Well, I know there has been a very considerable change in the character of the tonnage, but what has been the exact figures—I have not examined the estimates, but the change in the class of vessels may have been, may have worked the change in the tonnage; but, so far as this future estimate which I speak of, it was based upon *all the probabilities;* the construction of railroads; the selecting New Orleans as a terminal point; the building of the jetties—all of those things, in my judgment, would produce, will produce, a vast increase in the tonnage of this port by the time those reductions would be enforced.

"*I did take into consideration all the additional obligations that were put upon the lessees in this lease over the former rates of wharfage.*"

No more intelligent nor pertinent testimony was ever offerred in any case than that given in this by Major Burke. (R., pp. 144–'6, 203–'42, 278–292.)

Confirming substantially all that is said by this witness, we have the testimony of C. A. Eager (pp. 154–176) and Henry Ellerman (pp. 176–203), the lessees, who immediately preceded the present defendants. Added to this we have the testimony of a large number of experienced steamboatmen familiar with the facilities offered by all the different

ports on the Mississippi and Ohio rivers and their tributaries, and the charges therefor, showing a remarkable concurrence of opinion to this effect, that for exorbitance in charges the wharf charges in New Orleans have no parallel.

HARBOR POLICE.

The testimony on this question is simply destructive. It shows that thirty thousand dollars ($30,000) per annum taken from commerce to support the so-called harbor police is a *naked burden*, without any benefits whatever; that the so-called harbor police is a myth; that the shipping is compelled to pay *extra* for any services rendered them by the police; that there is organized and in constant use now on the levee a body of policemen under the charge of one Farrell, who runs the business on strictly commercial principles and with whom most of the steamboats and ships have regular engagements, based upon the idea that there is no other police. As a matter of fact, beyond dispute the harbor police render the shipping no exclusive services. Whatever services, if any, they may render are services for the benefit of the whole body of citizens and not for the special benefit of commerce.

In this connection a strange accident happened to two of the witnesses of the defendants in giving their testimony seeking to support the claim made by the lessees for electric lights. In giving testimony intended to show that the electric lights were a necessity, two of the defendants' witnesses inadvertently stated that the electric lights were of so much value that they dispensed with the necessity of a harbor police, and added, as a matter of fact, as did many other

witnesses, that there was really *no such thing* in existence as a harbor police upon which the shipping depended.

We invite special attention to the testimony of Captain F. A. Blanks (pp. 150–'2), Captain O. P. Shinkle (pp. 152–'4), Captain Andrew J. Carter (pp. 139–'42), and Captain A. M. Halliday (pp. 260–'78).

TESTIMONY AS TO HARBOR POLICE.

M. N. Wood, owner and master of steamer Silver City and a director on the Red River Packet Line, says (R., p. 136):

"With reference to the police, I would say they render no special service to the shipping and are of no value in guarding and watching freight; this is done at *our expense*. The duties of the harbor police are duties *common* to the general police of the city; the benefits derived from their source are *in no way peculiar to commerce*. In all cases where we specially require their services, such as to quell riots, we not only do as a matter of fact *pay* them, but have always paid them, &c. The tax, therefore, upon the shipping to defray the police expenses is a *naked burden*, without any benefits whatever to the shipping. The shipping interests require and receive *no other* protection than the *common* interests of *all* the citizens of New Orleans."

Captain J. E. Bron (R., p. 137) says, confirming the above testimony:

"I know the rate of charges for wharfage in New Orleans. It is more *by one-half*, in my estimation, than is necessary to pay the city of New Orleans, in my estimation, *a fair compensation* for the use of her wharves."

Captain Andrew J. Carter, of the Anchor Line (R., p. 141), says:

"I am fully satisfied that the rate of wharfage charges in New Orleans is *very excessive*, and that the amount realized from the same is *far in excess* of what is necessary to compensate the city of New Orleans for the use of her wharves and to keep them in proper repairs even if we admitted what we deny—that the expenditure for police and lights (electric) is warranted."

To the same effect is the evidence of—

J. L. Carter, R., 142.
T. N. Scovill, R., 143.
Captain Jas. T. O. Pry, R., 146.
H. O. Pry, R., 149.
R. H. Smith, R., 149.
Captain F. A. Blank, R., 150.
Captain A. Dugas, R., 152.
Captain O. P. Shingl, R., 152.
C. A. Eager, R., 154.
Henry Ellerman, R., 176.
Major E. A. Burke, R., 144, 203, 243.
Captain A. M. Halliday.
Exhibit "A"—Remarks of E. A. Burke, administrator of improvements of the city of New Orleans, to the council at a time antecedent to granting this lease and wholly disinterested.

This paper is worth all other evidence in the record no either side. He shows by actual figures how exorbitant the wharf charges are and how much lower rates are practicable.

This Exhibit A should be read in connection with his

testimony with reference to the same (Record, pp. 145, 146)

At p. 146 he says:

"For full particulars and data upon which my judgment was founded in respect to the receipts and expenditures of former years and the probable cost of the present maintenance, I would refer to my remarks as administrator of improvements of the city, contained in the printed pamphlet marked Exhibit 'A.' I am satisfied that at a much less rate of wharfage equal facilities could be afforded the commerce of the port." (Record, p. 146.)

If any charge can be so unreasonable as to amount to a prohibited tax how are the courts to determine the question of reasonableness *vel non?*

We know of no way except upon evidence.

In the case at bar most remarkable evidence appears on the face of the ordinance, which is the corner-stone of the lease, supplemented by a mass of uncontrovertible testimony. To this is opposed a rude mass of testimony given largely by parties in interest.

The commerce of the port of New Orleans cannot flourish under such severe exactions. It is all important to know how far local authorities can go and not violate the constitutional inhibitions.

To establish the rule that wharf charges, no matter for what made or how excessive, cannot be arrested by the United States courts is to remit our ports to the tender mercies of municipal authorities, to make their discretion *the sole measure* of the burdens that commerce must bear, to obliterate all protection supposed to have been secured through the Constitution of the United States.

It is difficult to conceive of a more glaring case than the one at bar.

HOW WOULD THIS LEASE BE CONSIDERED UNDER THE LAWS OF LOUISIANA?

Would its provisions harmonize with the requirements of the Civil Code?

We respectfully submit that there is no sanction in our law for such charges as are therein imposed.

No law exists in Louisiana by which a tenant is made to furnish his landlord the means with which to erect tenements for which he, the landlord, can afterwards demand rent.

In the absence of special provision in Louisiana leases requiring the lessees to replace the buildings that have *decayed* the lessees are not held to any obligation to rebuild. Any such stipulation in a lease would have to be based upon a consideration received, or to be received, by the tenant as an equivalent for so extraordinary an obligation assumed by the tenant.

It was doubtless a knowledge of this law that induced the city council, in framing this ordinance, to require the lessees to restore all the wharves destroyed during their lease, whether by decay or otherwise.

Article 2717 of the Civil Code is specific on this subject, and reads: "The expense of the repairs which unforeseen events or decay may render necessary must be supported by the lessor, though such repairs be of the nature of those which are usually done by the lessee."

The reason why the lessor is compelled to repair and rebuild that which has decayed is the same reason which compelled him originally to build it, in the eye of the law.

The law-maker evidently regarded a building that had decayed, that had ceased to exist, as ceasing to be the property of any one; and therefore no one, *by right of proprietorship*, could levy any tax relating in the remotest degree to it.

Decayed buildings are as though they had never been built; their reconstruction must, of necessity, be made by and at the expense exclusively of the owner of the land. We therefore assert that if the provisions of this lease are to be construed exclusively under the law of Louisiana, the amount charged is largely in excess of a reasonable compensation.

As illustrative of the correctness of the doctrine laid down by Judge Pardee in the case of Leathers *vs.* Aiken, where he says the "commerce of this year cannot be taxed to furnish facilities for the next year," we recall the court's special attention to the undisputed fact connected with the electric lights in this case.

They had no existence for many months after the present lease went into operation, and after repeated payments of the tax based upon the expense that would be incurred in the erection of the said lights, had been made. The expense of $59,500, incurred for bulkheads, was equally a tax for facilities to be thereafter furnished, and is obnoxious also to the objection that the said bulkheads were designed specially as a protection *for the general levee* in front of the city and cannot properly be included under the head of wharfage charges.

The same objection applies with equal force to the $25,000 per annum required by the ordinance to be expended in erecting *new* wharves; surely it cannot be said that this sum

of money, wrested year by year from the shipping, was, *at the date* of the passage of the ordinance, the money of the city of New Orleans with which she was to erect new wharves.

To sum up the whole, without traveling in detail through the allegations of the bill and the mass of evidence, we do not hesitate to say that if the doctrines contended for by the defendants in this case shall become the settled jurisprudence of this country that the safeguards which in the Constitution of the United States were thrown around commerce, a subject, perhaps, more jealously guarded by the framers of the Constitution than any other committed to their care, will prove of little value.

Already we understand that some of the smaller cities and towns on the banks of the Mississippi river and its tributaries are inspired by a misinterpretation of the Parkersburg case, with the hope of replenishing their exhausted treasuries from the commerce that is compelled to pay tribute to their wharves.

In the language of Justice Miller, in the case of Cannon *vs.* New Orleans, we repeat, if such burdens are to be heaped upon commerce, let it be done by *a formal act* of Congress, which shall have the sanction of the whole people, and then the judiciary will not be subject to any criticism for not enforcing the guarantees which have heretofore been supposed to exist in the Constitution of the United States against unjust discrimination by any State.

In the very words of Justice Miller:

"This is a much wiser course. Congress is a much safer depositary of the final exercise of this important power than the ill-regulated and overtaxed towns and cities, which are

not likely to look much beyond their own needs and their own interests."

DANGEROUS PRECEDENT.

The evil consequences of giving legal sanction to such provisions as are contained in this ordinance cannot be overestimated. To confirm the present lease would be to vest absolute discretion in municipal corporations as to how great the burden shall be that they will impose upon commerce. It must result in an utter destruction of the protection which commerce has heretofore received from the Constitution of the United States.

The decision of this question is of equal value to every port within the United States.

It will be contended that unless Congress has intervened to prevent such a lease as is here contested the courts cannot interfere.

The better position is that unless Congress has, by formal act, *permitted* such charges the courts will uphold the constitutional protection—give vitality to its true principles.

The spirit of the decision of this Court in the late case of Wabash & C. R'y Co. *vs.* Illinois, 118 U. S., p. 557, justifies this view. No State law can sanction exactions prohibited by the Constitution of the United States because Congress has not seen fit to act.

If the charge is not in the nature of a compensation it is not made by virtue of proprietorship, and is a tax for the benefit of the State or municipality, and is always *added to the cost of transportation*, and thus, as held in State Freight Tax Case, 15 Wall., 232, it is "a tax, in effect, upon the privilege of carrying goods through the State or municipality,

and conflicts with that clause of the Constitution which gives Congress exclusive power to regulate commerce between foreign nations and between the States.

No matter how indirect the action of the State, the courts will not permit an evasion of the constitutional requirement. In State Freight Tax Case above referred to, at p. 278, this court said:

"The tax is not compensation for services rendered by her (the State) or her agents. It is something *beyond* the *cost* of transportation or the ordinary charges therefor. Having no ownership in the railroads or canals, the State has no title to *their income* except so far as she reserved in the charters of the companies."

So we say here, the State and city having no ownership in the electric light works, they have no title *to their income.*

That they make no pretense to such ownership is shown on the face of the ordinance, which is made part of the lease. At p. 20, P. R., sec. 14 of ordinance 7079, will be found the following language:

"On the expiration of said lease the lessee or city may buy said electric apparatus at a value to be fixed by appraisers, one to be appointed by the city and one by the lessee, and, on failure to agree, they, the said appraisers, shall appoint an umpire."

Who owned this electric apparatus when the tax was imposed upon the shipping and collected from commerce? Neither the lessee nor the city, for they make distinct provision for a future purchase, which stipulation means, in plain English, after we have exacted the taxes from commerce and paid for these works we will make a divide. If

the city buys she must compensate the lessees for the plant which the lessees have paid for out of the taxes collected from commerce, and if the lessees buy they must pay the city for the use of the ground on which the plant is erected, and under this charming arrangement commerce is made to foot the whole bill, and when a new lease comes to be made the lessees will see to it that commerce is again made to reimburse the fortunate purchaser for any outlay he may make, and then the process will begin anew of taxing commerce for the use of her own structures.

Can any device be more transparent?

We need not go beyond the ordinance itself to deny ownership in either the city or lessees, and if they are not owners by what right do they presume to tax shipping? It can only be by virtue of some supposed governmental sovereignty which brings them within the constitutional inhibition.

If it be settled law, as we understand it to be, that wharfage charges must be in the nature of a reasonable compensation, and this compensation is demandable by virtue of ownership, it must follow that ownership must precede the demand for compensation, and unless it does the charge cannot be included under wharfage, and is a prohibited charge, and the lease in question must be declared null and void.

We perhaps have a clear right to ask its total annulment, but with a tender regard for the interests of the commerce of the port of New Orleans we only ask a reduction of the charge from the excessive figure, ten cents per ton, to six, which we have always been willing to pay. No embarrassment can flow from such a decree, and it will serve as a safe guide for the future.

We ask that the judgment of the lower court be reversed.

Respectfully submitted,

JOHN H. KENNARD,
WM. WIRT HOWE,
Of Counsel for Complainants and Appellants.

ADDENDA.

Louisiana Civil Code, article 2717:

"The expense of the repairs which unforeseen events or decay may render necessary must be supported by the lessor, though such repairs be of the nature of those which are usually done by the lessee."

Civil Code, article 455:

"The use of the banks of navigable rivers or streams is public; accordingly every one has a right freely to bring his vessels to land there; to make fast the same to the trees which are there planted; to unload his vessels; to deposit his goods; to dry his nets, and the like."

Article 863:

"The corporations of cities and towns and other places may construct on the public places, in the beds of rivers, and on their banks all buildings and other works which may be necessary for public utility, for the moving of vessels and the discharge of their cargoes, within the extent of their respective limits."

121-474

JAN 3 1887

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 117.

THE OUACHITA AND MISSISSIPPI RIVER PACKET COMPANY, WILLIAM T. SCOVILL, WILLIAM M. WOOD, ISABEL O'PRY, ET ALS., APPELLANTS,

vs.

MRS. CATHERINE M. AIKEN, ADMINISTRATRIX OF JOSEPH A. AIKEN, DECEASED. JOHN N. MENGE, JOHN J. BROWN, AND JOHN W. TOBIN, COPARTNERS DOING BUSINESS UNDER THE FIRM NAME OF JOSEPH A. AIKEN & CO., AND THE CITY OF NEW ORLEANS, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Brief on behalf of Defendants and Appellees.

GEORGE DENEGRE,
WILLIAM S. BENEDICT,
THOMAS L. BAYNE,
For Appellees.

L. GRAHAM & SON, PRINTERS, 101 GRAVIER ST., N. O.

SUPREME COURT OF THE UNITED STATES.

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Brief on behalf of Defendants and Appellees.

STATEMENT OF THE CASE.

Act No. 7 of the laws passed by the Legislature of the State of Louisiana at the extra session of 1870, Section 12, grants to the Council of the City of New Orleans "full power and authority to make and pass such by-laws and ordinances as are necessary and proper. * * * * * * * * * * *
To prescribe and collect rates of levee dues and wharfage, and to designate the place for anchoring and moving ships, steamboats, and other water craft in the port of New Orleans, and to regulate and maintain the public peace on the same while in the limits of the City of New Orleans."

Under the authority thus conferred, the City of New Orleans entered into the contract made part of the bill of complaint (Record, p. 15) and adopted the ordinances therein recited, fixing the rates of wharfage. Under this contract defendants became lessees of the wharves of the City of New Orleans, and in consideration of their undertaking to keep the wharves and landings in good

order and repair, and discharging certain other obligations recited in the contract, were granted the right to collect all of the wharfage, at certain rates stated, the rates being such as were prescribed by the ordinance adopted January 17th, 1875, with certain modifications, the most important of which, as bearing upon this controversy, being that the rates of wharfage for steamboats was to be reduced ten per cent. the third year of the lease, and twenty per cent. for each of the fourth and fifth years.

Complainants alleging themselves to be owners of steamboats duly enrolled and licensed under the Act of Congress, and plying between New Orleans and other ports and places upon the Mississippi River and its tributaries, filed their bill against the City of New Orleans and Jos. A. Aiken & Co., as lessees of the wharves, to restrain the collection of their demands for wharfage and to restrain them from proceeding at law to recover the wharfage charges.

Here as in the Parkersburg case, "It is contended that the city ordinance under which the wharfage was demanded is in conflict with the Constitution of the United States ; and this is the ground on which the jurisdiction of the Circuit Court was invoked.

The complaint is: "And under said name and guise as wharfage dues or charges, the said ordinance No. 7079, undertook to enforce and authorize the collection of an illegal and unconstitutional tax of $10,000 for the pay of the salaries of officers, clerks and other employés of the city of New Orleans, * * *

* * * * * * * *

and the said ordinance No. 7079, undertakes to impose, under the name and guise of wharfage charges or dues, a tax or revenue, which, during the term of said contract will amount to many hundreds of thousands of dollars, etc., etc. (Record, page 6.)

* * * * * * * *

That the imposition of said pretended dues and charges for wharfage therefore amount to a charge, or tax for entering said port, (Record, page 7), and that the imposition and collection of wharfage for the purposes mentioned in the ordinance 7079, "is in violation of Article 1, section 10 of the Constitution of the United States forbidding any State, without the consent of Congress, from laying any duty of tonnage; of article 1, section 8, granting to Congress the power and authority to regulate commerce with foreign nations, and among the several States and with the Indian tribes; of article 1, section 10, forbidding any State, without the consent of Congress, to lay impost or duties on imports or exports, except what may be absolutely necessary to execute its inspection laws; of article 1, section 9, "no tax or duty shall be laid on articles exported from any State," and of the Act of Congress of April 8th, 1812, admitting the State of Louisiana into the Union, etc." which Act guarantees the freedom of the Mississippi river. (Record, pages 7 and 8.)

Finally, it is charged that the dues are "nearly or quite double" "the fair, just and necessary compensation lawfully demandable from steamboats landing at the wharves designated and set apart, etc." (Record, p. 8.) * * * * * * And that no tax whatever can legally be imposed upon (Record, p. 11) commerce to defray the expense of original construction.

A rule for an injunction *pendente lite* was taken, and the injunction denied, the Circuit and District judges concurring. *Onachita & Miss. River Packet Co. vs. Aiken*, 11 Federal Reporter, p. 663. The case then went to final hearing; was heard before Mr. Justice Woods, and Circuit Judge Pardee, and the bill dismissed. Mr. Justice Woods (Judge Pardee concurring) delivered the opinion of the Court. *Onachita Packet Co. vs. Aiken*, 4 Woods, 208.

He said, referring to the *Parkersburg* case, 107 U. S., 705; "An examination of that case will show that none of the grounds upon which the collection of wharfage in this case is complained of can be sustained. * * * * * * * * *

"The ordinance and contract complained of in this case imposed charges for wharfage only; that is to say the steamboats and other water craft from which wharfage is collected are required to pay only for the use of the wharves, No demand is made of them for entering, loading or lying in the port or harbor." * * * * * * * * * * *

"We have therefore, no ground upon which to interfere with the local regulation of wharfage which is attacked in this case. The defendants are authorized by the local law to charge certain rates of wharfage, and there is no averment or proof that these rates have been exceeded. The defendants are therefore protected by the local law in the matters of which complaint is made in the bill; and the local law is not in violation of any provision of the Constitution of the United States or in contravention of any Act of Congress."

ARGUMENT.

The Circuit Court was without jurisdiction of this controversy.

As some of the complainants and all of the defendants are citizens of the State of Louisiana, the jurisdiction of the Circuit Court could not be invoked on the ground of citizenship. *Removal cases*, 100 U. S., 459, and the bill therefore charges that the case is one arising under the Constitution and Laws of the United States. But the averments of the bill and exhibits, do not bear out this statement. This case is in every respect precisely similar to the *Parkersburg case*, 107 U. S., 692. The bill of complaint seems to have been framed so as to include all of the objections to wharfage made and successively overruled in the different cases passed upon by this Court, commencing with the *Cannon case*, 20 Wallace, 577, and ending with the *Parkersburg*

case, and like all of these cases appears to have been dictated by a total misconception of the decision of this Court in *Cannon's case*.

The errors complained of are: 1st, that the ordinance under the name and guise of wharfage imposed a tax for revenue to be devoted to the general purposes of the city; 2nd, that the ordinance authorizing the use of a portion of the revenues for the construction of the wharves to that extent authorizes and levies an unconstitutional tax; 3rd, that the dues are excessive and beyond a reasonable compensation and therefore amount in substance to a tonnage tax, and violate the Constitution and the Act of 1812 admitting Louisiana into the Union; and the 4th ground of error is but a repetition of the second as to original construction.

In *Cannon vs. New Orleans*, 20 Wallace, 577, the city ordinance was declared invalid because *in terms* it imposed a charge for entering or lying in the port, not as compensation for the use of artificial facilities; and as was subsequently suggested by the Court in the *Keokuk case*, 95 U. S., 89. "It did not appear that he (Cannon) had ever made use of any wharf or improved levee; and what we decided was that the City could not impose a charge for merely stopping in the harbor."

In *Inman Steamship Company vs. Tinker*, 94 U. S., 243, "The charges are not exacted for any services rendered or offered to be rendered. If the vessel enter the port and immediately take her departure or load or unload, or make fast to any wharf, either of these things disjunctively brings her within the act, and makes her liable to the burden prescribed."

In *Packet Co. vs. Keokuk*, 95 U. S., 85, the question of wharf charges was squarely presented to this Court, and it was decided that reasonable wharfage dues could be charged and collected as compensation for artificial facilities furnished to commerce, and that such a charge was in no sense a tax or tonnage duty; that it was not a regulation of commerce between the States, and did not interfere with the free navigation of the river. In *Packet Co. vs. St. Louis*, 100 U. S., 423, the same question was again presented and the *Keokuk* case affirmed.

In *Vicksburg vs. Tobin case*, 100 U. S., 432, it was again decided that as the charges were made for the use of an improved wharf and "they were not exacted for the mere privilege of entering or remaining in, or departing from the port of Vicksburg. The ordinance in question does not therefore entrench upon the power of Congress to regulate commerce among the States, nor does it lay a duty of tonnage in the sense of the constitution."

In the *Keokuk and St. Louis cases*, it was admitted that the rates charged if due at all were reasonable. In the *Vicksburg case* the extent of the charges does not seem to have been discussed, but the decision of the Court is put squarely upon the ground that the charges having been levied as and for wharfage

could not be held to be taxes or tonnage duties. But for the first time in the *Catlesburg case*, 105 U. S., 560, a bill in chancery was filed, which, as in this case after reiterating the objections made in former cases further charged that the wharfage dues were unreasonable and excessive, and that the amount already collected exceeds the cost of erecting and preserving the wharf," and were therefore tonnage dues and otherwise violative of the Constitution of the United States."

In that case the prayer of the bill was to restrain the collection of all *excessive* taxes, and it was, therefore, a stronger case than the present one, in which complainants ask that the collection of any wharfage at all be restrained.

The Court held that the ordinance demanded wharfage or compensation for the use of artificial facilities, and nothing else. "It is idle, after the decision we have made, to call this a tax upon tonnage:" and further held that the demand of wharfage was not a regulation of commerce, or, "If a regulation of commerce at all it comes within that class in which the States may prescribe rules until Congress assumes to do so," and the decision of the Circuit Court sustaining the demurrer to the bill, was affirmed. The Court say: "There is no hindrance to trying this question in an action at law, where the verdict of the jury or the judgment of the Court in one or two cases would establish what is reasonable under the circumstances; and this being once established by the appropriate tribunal, the Court of equity could restrain the excess."

This last case containing the statement that "It is by no means apparent that they (the wharf charges) are excessive," it was left to the *Parkersburg case*, 107 U. S., 692, to finally dispel the errors into which a cursory reading of the *Cannon case* had led.

As we have already said, the *Parkersburg case* is exactly similar to the present case; that was a bill in chancery containing the same allegations of excessive wharfage made and levied for the express purpose of replenishing the City treasury and increasing its revenues, and a charge that the cost of the wharf had been collected over and over again. The bill was dismissed on the ground that as the parties were citizens of the same State, and the ordinance complained of exacted compensation (however exorbitant in amount) only for the use of artificial facilities furnished, there was no Federal question involved, and complainants could not invoke the aid of the Federal Court; and further, that the question of reasonableness of wharfage was only determinable by the laws of the State within whose jurisdiction the wharf was situated: "So long as Congress sees fit to abstain from action on the subject, our conclusion is, that it is entirely within the domain, and subject to the operation, of the State laws." * * * * "the case cannot be claimed as one arising under the Constitution and laws of the United States."

It would seem, therefore, that the Circuit Court could not enter-

tain the bill in this case, because the ordinance providing simply for the payment of dues as compensation for the use of facilities furnished, raised no question arising under the Constitution or Laws of the United States, and there were citizens of Louisiana on both sides of the controversy. Such was the decision of the Circuit Court, which dismissed the bill on these grounds.

It is obvious that the use made of the wharf revenues has no bearing whatever upon the question of reasonableness or unreasonableness of wharfage, except as circumstantial evidence; the question is, the value of the facilities furnished, and this is to be determined from the facts of each particular case and not upon presumptions based upon false hypotheses. It might turn out in some particular case that the rates would not prove to be a fair remuneration, and this is particularly true of a case such as this, where the lessees assume all of the risks, and are compelled to keep in order and rebuild immense and costly wooden structures, extending over some five miles of river front, and ever in danger of being destroyed by the caving banks of the Mississippi caused by its constantly shifting current.

This suit having been brought before the decision of the Court in the *Parkersburg case*, and, we believe, before the pnblication of the *Cattlesburg* decision, an answer was filed and it was tried upon the merits, We scarcely think it necessary now to enter upon a consideration of the evidence, but if that were necessary the evidence not only establishes the reasonableness of the charges, but is strong enough to justify a higher charge. So much so, that in dismissing the bill for want of jurisdiction, Mr. Justice Woods could not refrain from saying: "We may remark, however, that the exactions of wharfage are substantially expended for the benefit of those using the wharves and that the proof does not satisfy us that the rates are exorbitant or excessive."

The answer states that the City of New Oleans is authorized by law to regulate and fix rates of wharfage, and that it has exercised that right for a period of eighty years at rates always in excess of the present rates; that the portion of the wharves devoted to steamboats is the best and most valuable portion of the wharves, most centrally situated, and best adapted to their wants; that the rates charged are nothing but a fair and reasonable remuneration for facilities furnished, and denies that any tonnage duty or tax is levied or attempted to be levied by the ordinance. It states that the revenue derived is expended for the benefit of commerce and that the electric lights, police and wharfingers andclerks provided for in the ordinance are necessary to commerce and of the highest advantage; that the conveniences afforded and facilities furnished are greater than offered at any other port on the Mississippi River; that the rates of wharfage are less than in 1875, and thirty-three

per cent. lower than the rates prior to 1875. And, finally, that the present wharf lease was formed by a convention of all of the commercial interests of the city; was first submitted to public bid at the rate of six cents per ton wharfage for steamboats, but no one would accept it at that rate and was finally adjudicated to defendants as the lowest bidders,— that is those offering to charge the least wharfage.

The wooden wharves of the City of New Orleans alone, without counting the landings which also furnish facilities, occupy some 25,200 feet of space, and defendants as wharf lessees have charge of and are responsible for the maintenance and repair of all of these except some 4000 feet which are under the exclusive control of certain corporations. In all other cases while peferences in the use of wharves are granted, the lessees bear the burden of maintenance. (Record, p. 56, 317, 315 and page 322 Section 2 of ordinance 7079 A. S.)

The maps in evidence, and the wharf ordinance 7079, show that the landings occupy a still greater space.

When the defendants took charge the wharves were in a deplorable condition. (See photographs offered in evidence, statement, p. 51, and testimony, Pilie, p. 115; Crebbin, p. 51.)

During the first year of defendants' lease, from May 29, 1881, to May 29, 1882, they expended some $80,000 more on the wharves than they collected. (See statements A and B, pp. 126 and 127.)

The banks of the river, in certain portions of the city are caving banks, and is very difficult to build any wharves which will last, making annual rebuilding necessary (pp. 54 and 68).

Besides the wooden wharves devoted to steamboats, there is a very large space of open ground back of the wharves which is exclusively devoted to their purposes, and this ground is valued at $371,000 (p. 55), and is not only the best adapted to steamboat purposes, but the only place on the river front at which the steamboats could discharge and receive their cargoes to the same advantage (pp. 62, 64, 65, 73, 78). So valuable is the steamboat landing, that three steamboat owners offered to pay the present rates of wharfage, and besides, build and keep the levees in repair at their own expense, if allowed the exclusive use of a portion of the steamboat landing (p. 65).

It is amply shown by the testimony that the question of the rate of wharfage is nothing to steamboats as compared with the furnishing of facilities for rapid discharging, so that the vessels can always be under way earning freight, and that owing to the extraordinary facilities furnished at New Orleans, the largest steamboats can arrive in the morning with cargoes of 6000 bales of cotton, discharge, and leave in the evening with a full return cargo, a thing which couldn't be done at any other port on the river in less than a week. On one occasion 3600 bales of cotton were discharged in three and one-half hours (p. 103). Owing to the large space

devoted to steamboats the different lots consigned to different consignees are divided as they came off the steamboats and promptly carted away, the large space allowing drays to drive in amongst the cotton and carry it away at once, leaving the wharf and levee open to the discharge and receipt of new goods.

The testimony as to the necessity and benefit of the electric lights and police and clerks is overwhelming: it is shown that those clauses in the lease were introduced by the commercial bodies who helped to frame it; that the police and lights save vast sums annually to commerce, not only in affording additional security, but in taking off the shipping the burden of furnishing watchmen at their own expense. And the electric lights and contravention clerks and wharfingers facilitate the movement of cargoes and insure rapid discharge and delivery of goods.

We confidently pray that the decree of the Circuit Court be affirmed.

GEORGE DENEGRE,
WILLIAM S. BENEDICT,
THOMAS L. BAYNE,
For Appellees.

121-444

FILED
JAN 4 1887
JAMES H. MCKENNEY
CLERK.

SUPREME COURT OF THE UNITED STATES

No. 117.

THE OUACHITA AND MISSISSIPPI RIVER PACKET CO., ET AL.

vs.

MRS. CATHERINE M. AIKEN, ET AL.

Brief of Defendants, Appellees.

IN EQUITY.

ABSTRACT OF CASE.

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IN EQUITY.

ABSTRACT OF CASE.

The complainants, appellants, complain of a contract awarded defendants, by the city of New Orleans, State of Louisiana, on the 29th May, 1881, to collect wharfage dues from water craft using the wharves, piers, and other conveniences of commerce erected in front of said city on the Mississippi river for five years, and they urge in substance, as assignments of error:

1. That the city ordinance and contract purport to give a right to collect wharfage dues, whereas the charges imposed as wharfage dues are in a *large part* devoted to the payment of the salaries of the public police force and wharf master of the city.

2. That the said ordinance imposes such wharfage dues for the purpose of making new wharves, or original constructions, and same is a duty on commerce, and the city can not impose a wharfage tax before it owns its wharves.

3. That said charges are unreasonable and excessive.

The defendants answered that the State of Louisiana by its legislature, authorized the city of New Orleans to pass all requisite ordinances to fix and regulate charges for wharfage on its river front for the conveniences furnished. That the

rates as now fixed are greatly reduced from what they have been in all previous use of said wharves.

They deny that the charges imposed for wharfage is a duty or tax on tonnage or commerce; and deny that any other recompense or compensation is imposed, except that which is a reasonable compensation for the use of such wharves.

They aver that the amount paid under the contract for the wharfingers, clerks, policing and lighting of said wharves, constitute a part or portion of the legitimate expenditures of the said city, necessary for, and used solely for account of said wharves, and for the convenience of the vessels using same, in their aid and for their benefit.

That the rates for wharfage dues as established by the city ordinance, are thirty-three per cent. less than they have been at any time heretofore; that any water craft may land in front of said city where conveniences for commerce have not been provided, without expense; that the wharfage charge as imposed is reasonable; the banks of the river in front of said city are constantly shifting, carrying aways aid wharves almost annually by the force and effect of the current of the river, it being necessary to build same of wood, and that annual original reconstruction thereof become an absolute requisite.

That the ordinance under which the contract in dispute was made, was framed by the representatives of all the maritime interests of said port, who suggested wharfage dues to be imposed for the conveniences furnished at six cents per ton; that their recommendations were received and acted upon by the city of New Orleans through its council, and at public vendue no bid therefor was made at such rate, and that thereafter respondents made their bid which was accepted and is complained of herein.

That all water craft using said wharves are satisfied with the rates of wharfage, except complainants, who do not pay one-fifth thereof.

The State of Louisiana granted the right to the City of New Orleans to build wharves and provide for the payment of wharfage dues for the use thereof.

See the City Charter, Acts of the Legislature of 1870, page 35, section 12, which provides:

"That the Council shall have the full power and authority to make and pass such by-laws and ordinances as are necessary and proper to regulate and make improvements to wharves, * * * for cleaning the banks of the river, * * * to prescribe and collect rates of levee dues and wharfage and to designate the place for anchoring and mooring ships, steamboats and other water craft in the port of New Orleans, and to regulate and maintain the public peace on the same, while in the limits of the City of New Orleans."

Also under Par. 13 of Sec. 7 of Act of La., No. 48 of 1871, p. 147, which reads: "No lease of wharves or landings shall be made for a term greater than ten years; and no such lease of ferries or wharves can be made except upon adjudication authorized and subsequently accepted and approved by the votes of five members of the Council."

Under this authority said city acted, and the contract in question was the result.

The points urged by appellants may be briefly stated:

1. Does the fact that the defendants are required by their contract to pay into the city treasury forty thousand dollars per annum for the payment of wharfingers, harbor masters and their employés; for the payment of the harbor police to maintain order, care for and safely keep the cargoes of the various vessels upon said wharves; for the lighting of the wharves by gas or electric lights; constitute such a charge as is beyond what is known as a convenience of commerce, or impose thereby a duty or tax upon tonnage?

2. Does the ordinance prescribe such new works or original constructions to be paid for from wharfage dues, as renders it obnoxious to the Constitutional provisions complained of?

3. Is the charge imposed unreasonable and excessive?

The power of the State (in the absence of acts of Congress) was properly exercised, to authorize a lease of the wharves and collection of compensation for use thereof.

Cannon vs. New Orleans, 20 Wallace, 582; Packet Co. vs. Keokuk, 95 U. S., 84 et seq.; Packet Co. vs. St. Louis, 100 U. S., 425; Packet Co. vs. Catlettsburg, 105 U. S., 563; Transportation Co. vs. Parkersburg, 107 U. S., 702.

ARGUMENT.

FIRST.

Do the requirements of the ordinance constitute a duty or tax on commerce?

It is complained that a large part of the wharf dues are to be devoted to the payment of the salaries of wharf masters and the public police of the city, who render their services to the city, and not to commerce.

The bill complains, not only of the sum devoted to the payment and maintenance of the harbor police for the protection of commerce, but as well to the amount devoted to the payment of the salaries of the wharfingers and other officers connected with the wharves, and with the lighting of such wharves under Section 26, of the specifications of the ordinance, p. 23.

In the case of Packet Co., vs. St. Louis, 100 U. S. 426, you were called upon, and detailed the duties of a *harbor master*, which are to a great extent those of a wharfinger, and you said in that case, p. 427, services rendered by him in the execution of those duties, would be "in aid, and not a hinderance of commerce and navigation."

In the case of Packet Co. vs. Catlettsburg, 105 U. S., p. 562, you commented upon the duties of a *wharfinger*, and of the necessity which was obvious of the appointment of such officer, and you stated, p. 565, that when it is considered that a wharf needs constant repair and care, that the compensation of the wharf master who must always be ready to locate the vessels, and collect the charges, is to be paid, and that where the character and extent of the improvements are not shown, it would seem that something more than characterizing those rates as excessive, is needed to invoke the restraining power of a Court of Equity.

The same reasoning applies to the harbor police, who are required for the protection of commerce along the river front of the city, for it is not to be presumed that when the harbor master, wharf master, and their various clerks have closed their day's labor, that the vessels and their cargoes landed at such wharves are to be left entirely without protection, after or before they have left the ship's tackle. It is to be presumed

they require protection, and if a part of the dues paid by such vessels is used for the maintenance of such officers, to guard such cargoes, we may well say that their services are "in the aid, and not a hinderance of commerce and novigation."

SECOND.

It is urged that a portion of the wharf dues are to be used for and devoted to making *original constructions;* that is to say, making new wharves.

To solve this point, we refer to the Ordinance and its various specifications.

By Section 4, p. 16, we find the Lessee was required to take the wharves in the condition they were on the 29th of May, 1881, to repair them and keep them in order for five years; to rebuild any of them which were damaged or destroyed, p. 17; to extend same further into the river to get a better depth of water, p. 17; to build additional new wharves under Section 11, p. 19, at a cost not to exceed twenty-five thousand dollars per annum; to connect the wharves together, p. 19; it being intended that the words, "new wharves," should not apply to the rebuilding of wharves to replace those destroyed; and to make all such works and repairs under the supervision of the city officers, Section 17, p. 21.

The foregoing provisions taken from the specifications, indicate the intention of the city to replace its wharves which had sunk into the river, or been destroyed from the usual casualties of the current of the river, with new wharves, and to aid and facilitate the commerce of the port by connecting the various wharves, slips or piers together, which connections are styled "new wharves," aiding thereby the vessels using such wharves, and the facilities of the commerce of the port.

It is shown by the evidence in this case that at the port of New Orleans, the bank of the Mississippi river is constantly shifting, and the sand or batture increases, in front of some parts of the city, and cuts away the banks at other parts of the city, causing the wharves to be built further out in the first parts stated, and causing the demolition of the wharves in

the part secondly stated, requiring in each instance, *new constructions*.

Test'y Wm. Fagan, p. 48.
" J. B. Prague, p. 50.
" J. H. Menge, p. 60.
" Jesse K. Bell, p. 63.
" Louis H. Pilié, p. 68.
" M. J. Zunts, p. 72.

It also appears from the evidence, that by reason of the vagaries of the current of the Mississippi river at that port, wharves cannot be built of any substance except wood; that no foundation of rock or other hard substance exists, and that notwithstanding the immense piles that are used for the wharves that are sunk into the bed of the river, to a depth in some instances of thirty or more feet, and placed together in close clusters, well braced, jointed and capped, it is of constant occurrence that the falling of the river during the dry season, carries with it, not only the foundations in which these piles have been driven, but as well the piles and the superstructures thereon, causing thereby, the wharves to be almost annually rebuilt.

It is also in evidence that in cases where the wharves are erected in places where the river "makes," as we use the term, and does not cave the bank, that the exposure to wind and weather, and the dampness of the climate, gives to such wharves the life of five years, requiring a new building thereof in that period of time, if not sooner destroyed.

THIRD.

It is complained that the charges allowed are unreasonable and in violation of the Federal Constitution.

It appears from the evidence that the requirements of the ordinance were suggested by the various maritime corporations and agencies in the port of New Orleans, whose committee framed the specifications under which the lease complained of in this case was advertised for bidders.

That the requirements of such lease were necessary for the convenience of the shipping of this port is necessarily to be

presumed, not only from that fact, but as well as from its adoption by the city authorities, and also by the acquiescence therein of four-fifths of the shipping interests of said city, who have not complained concerning the charges averred by complainant herein to be excessive.

But that question is one not applicable, under the allegations of the bill in this case to be determined by a Court of Equity.

This Court said in Packet Co. vs. Cattlettsburg, 105 U. S., 565, "there is no hinderance to trying this question in an action at law, whether the verdict of the jury or judgment of the Court in one or two cases would establish what is reasonable under the circumstances, and this being once established, by the appropriate tribunal, the Court of Equity could restrain the excess."

Referring to the charges as imposed by the ordinance and the lease complained of in this case, and in this connection we will refer to the decision of Mr. Chief Justice Eustis of the Supreme Court of Louisiana, in the case of the First Municipality vs. Pease, decided in May, 1847. 2nd Annual, p. 538.

In that case a claim was made for the sum of $82, as wharfage, due by the steamboat Sultana, a vessel upwards of 500 tons burden, making one voyage a week.

This charge appears to be at a rate exceeding fifteen cents per ton, and the Court says: p. 542.

"The matter we are thus called upon to decide is purely administrative. We are called upon to fix the sum which the municipality may receive as wharfage, and to refuse to award any sum beyond what we may deem lawful, as a fair remuneration for their port expenses, actual, prospective and contingent. There could scarcely be a stronger illustration than this case offers, of the wisdom and truth of the *dictum* of Chief Justice Marshal, in the case of McCulloch vs. the State of Maryland, 12 Wheaton, 430: "We are not driven," says he, "to the perplexing inquiry, so unfit for the judicial department, what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power." The functions of that department are, under the true theory of our Government, confined to those cases in which its authority cannot be ques-

tioned, and its action will be consequently effectual. Second Municipality vs. Duncan, ante., p. 182.

"If the Court were to reduce the amount as asked by the defendants, an accident might render its judgment not only contradictory to the very principle on which it would be founded, but its execution an unwarrantable interference with things over which the municipal government must necessarily have the control."

"The Government of each municipality is charged with the administration and police of its portion of the port, the preservation of the levee, as well as with its own financial affairs."

"The authority delegated to them for the former object is a portion of the political power of the State, and its exercise appertains to the public order, and involves the safety of the city in certain seasons of the year. The reasoning of the Chief Justice in the case cited, may be applied to a certain extent to the case under consideration. The government of the municipality has determined that the rates of wharfage are due, as such; from this the State has not dissented. The responsibility of the act rests with the municipal government. The consequence of the interference of the judicial power in the details of its finances, can be readily foreseen. If it be appealed to in cases in which the amount of its imposts, taxes, or dues, are drawn in question, and should exercise its authority in matters of detail, or those which may be considered as administrative, it is obvious that the administration of municipal affairs must be arrested, unless the judicial power took upon itself the responsibility of conducting them, and provided against the consequences of its decrees."

"It would seem, therefore, to be true, that, within a certain range, which however it is not easy to define or limit, where there is an acknowledged right which is necessary for the performance of a public function and which is liable to abuse, that the measure of its use and abuse is rather a matter of legislative discretion than for judicial decision; where there is no right, however small the burden or laudable the purpose to which it is applied, the judiciary must interfere. If this wharfage is a tax on commerce, or on imports, or exports, it is unconstitutional, however small the amount. If it be not *per se*

unconstitutional, the unconstitutionality depending according to the argument on the unreasonableness of the amount, the action of the judiciary is brought directly in conflict with the municipal administrative power or an administrative question, over which, it must be conceded, that the city government is called upon to exercise to a certain extent discretionary power. The judicial action is put forth in favor of absolute, positive, legal rights; they must be separated by a distinct line of demarcation from those which are subject to the action of other branches of the government, the interference with which must be avoided. Such is, as we understand it, the theory of our system; and upon the observance of the principle of leaving to each branch of the government the performance of the functions with which it is vested, its success and durability depends."

"The force of the argument addressed to us presupposes that a proper case has been made out for the judicial power. The impolicy of this ordinance, the disastrous consequences of imposing burthens on commerce, and the inevitable effect of such a course of exaction on the interests of the State and city, may be as serious and as certain as is contended for on the part of the defendants."

"We are far from believing that the charges imposed by the ordinance, are consistent with a proper and considerate view of those interests. The remedy for this can be had elsewhere than from the judicial power. With more enlarged views of public policy, the electors may apply at once a remedy to the evil; or the legislature itself may confine the exactions of the municipalities within fixed and reasonable limits. The States of the Union bordering on the waters of this great valley, and the great shipping interest of the north, whose interests are most affected by our port charges, will be sure, in case of necessity, to call into activity for their protection the power of Congress to regulate commerce."

"It cannot be believed that, if it were attempted, a State holding the great entrance from the ocean to large and populous internal States and cities, would be permitted, under our present political organization, to embarass foreign and domestic trade by unreasonable and unnecessary burthens; which

tions which had almost totally destroyed all wharves at that time, and the fact of such recommendations and specifications cannot be better exemplified to the Court than by a view of the photographic exhibits on file (in original by consent), showing the exact condition of those wharves at or about the time when the specifications were prepared, and the present contract was advertised and let to the defendants.

CONCLUSION.

The *gist* of the brief and argument of complainant is, that the city had no right to improve its facilities for commerce, by the connection of its various wharves so as to make them continuous, entailing an annual expense upon the respondents for that purpose of twenty-five thousand dollars per annum, or in other words that its charge as against commerce for such wharves is based, not only upon the fact of its ownership of the wharves as they then existed, but as well upon the expenses neces-sary to be incurred by the lessees in the construction of connecting wharves.

Now it is evident from the Record, by ordinance 2948 of 1875, p. 13, that the rates now charged were fixed at that date regardless of the provisions embraced in the new specifications, made more onerous the duties of the lessees, and required them in addition to the duties then devolving upon lessees, and upon the city itself during the period of time that it maintained its own wharves, and collected the revenues therefrom, expenditures greatly in excess of those previously incurred, with no corresponding increase of the revenues from shipping in port, but with a gradual decrease thereof during the lease, pp. 24 and 25.

If we take these facts in connection with those which are apparent, viz: that for ten years prior to 1875, the city of New Orleans lost the sum, in round numbers, of one million five hundred thousand dollars in the maintenance of the wharves; that the lessees, from 1875 to 1881, made no money as such lessees from the greater rates then established, and which were more than those now complained of, and less than ever before, we find no reason in law or equity for the complaint in this cause.

Mr. High, in his work on Injunctions, second edition, says, that an injunction should never issue where the objections can be heard at law, Section 64, nor against the exercise of authority of a municipal corporation relative to public improvements, Sections 1245, 1246 and 1270; and that where a discretion is left in a municipal corporation by State authorities, a Court of Equity will not enjoin such discretion. Sections 1251, 1186, 1240 and 1270, and more especially in a case such as this, where neither *fraud* or *ultra vires* is alleged.

The views of that author are in accord with those of Judge Dillon in his work on Municipal Corporations. Third Edition, Sections 103, 109, 112 and 562.

As well as in accord with the cases from Louisiana,

First Municipality vs. Pease, 2 Ann., 538.
Melpomene vs. City, 14 Ann., 452.
City vs. Wilmot, 31 Ann., 65.

And are not in conflict with those of any properly constituted Court.

The matters in contest herein have received judicial cognizance under this same lease by Judge Billings of the District Court of Louisiana, for the Eastern District of Louisiana; by Judge Pardee of the Circuit Court, and by Mr. Justice Woods of this Court, their decisions being found in 9 Federal Reporter, 679; Federal Reporter, 663; 16 Federal Reporter, 890.

We pray the decree of the Lower Court be affirmed.

Respectfully submitted,

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